TABLE OF CONTENTS

	Page
Opinion Below	2
Jurisdiction	2-3
The Statute Involved	3-4
Questions Presented	4-5
Statement	5-9
How the Federal Question is Presented	9
The Questions are Substantial	9-14
Appendix A—Opinion of the Michigan Supreme Court	1a-20a
Appendix B—Decree of the Michigan Supreme Court	20a-22a
Appendix C—The Statute Involved	23a-32a

INDEX TO AUTHORITIES CITED

Cases:	Page
Charleston Federal Savings & Loan Association et al. v. Alderson, 324 U. S. 182 at 187 (1944)	14
Chicago, Rock Island & Pacific Ry. Co. v. Perry, 259 U. S. 548 at 551 (1921)	3
Cooke v. United States, 267 U. S. 517	9
Gompers v. Buck's Stove and Range Company, 221 U. S. 418	14
Home Insurance Co. v. Dick, 281 U. S. 397 at 407 (1929)	3

	Page
Nickey et al. v. Mississippi, 292 U. S. 393 at 394 (1933)	3
Oliver, In re, 333 U. S. 257 (1948)	9, 10
Sacher v. United States, 343 U. S. 1 (1951)	9
Staley v. South Jersey Realty Comany, N. J. Ct. of Errors and Appeals, 83 N. J. Eq. 300, 90 A. 1042 (1914)	13
State ex rel. Russell v. Dist. Court (1895), 60 Minn. 478, 62 N. W. 831	13
Whitfield v. Ohio, 297 U. S. 431 at 436 (1935)	3
Texts:	
Stern and Gressman, Supreme Court Practice, 2nd Ed.—Revised Rules, B.N.A. Inc., (1954)	11
Statutes:	
Michigan Statutes Annotated: Sec. 27.511 et seq.	3, 4
29 McKinney's Consolidated Laws of New York, Judiciary, Article 19, Section 769, page 659	12
Wisconsin Statutes, 1949, Sec. 295.12, p. 2897	12
Miscellaneous:	
Law Reports Annotated, Sec. 1919b, p. 118	13

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No.....

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO, a voluntary unincorporated labor union; LOCAL UNION No. 656 of said International Union; A. JAMES DODDIE and RUSSELL NOLAN,
Appellants,
vs.
GREAT LAKES GREYHOUND LINES, a Division of Greyhound Corporation, a Delaware Corporation

ON APPEAL FROM THE MICHIGAN SUPREME COURT

JURISDICTIONAL STATEMENT

Appellants appeal from the final decree (entitled "Order") of the Michigan Supreme Court, entered on November 29, 1954, affirming as to these appellants only the order of the Circuit Court for the County of Wayne, In Chancery, adjudging these four appellants (and one John Szabo) guilty of contempt for alleged failure, neglect, and

refusal to obey a restraining order (and reversing and vacating the said order of the Circuit Court for the County of Wayne, In Chancery, as to the said John Szabo), and submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINION BELOW

The opinion of the Michigan Supreme Court is reported at 341 Mich. 290. The Circuit Court did not prepare an opinion. The opinion and decree of the Michigan Supreme Court are attached hereto as Appendices A and B.

JURISDICTION

Appellants were convicted of the offense of contempt of court in alleged violation of Act No. 314 of Public Acts of 1915 of the State of Michigan, Chapter 5 (Compiled Laws of 1948, Sec. 605.1 *et seq.;* Michigan Statutes Annotated Sec. 27.511 *et seq.*), in that appellants were each held to have violated a temporary restraining order dated April 23, 1953, issued out of the Circuit Court for the County of Wayne, In Chancery. The Circuit Court order adjudging contempt was entered May 12, 1953. The Michigan Supreme Court affirmed as to these appellants in decree dated and entered November 29, 1954. In Order dated January 14, 1955, application for rehearing was denied by the Michigan Supreme Court. Notice of Appeal to the United States Supreme Court from the decree of the Michigan Supreme Court was filed February 24, 1955, in the Circuit Court for the County of Wayne (then vested of the record). The jurisdiction of the Supreme Court to hear

this appeal rests upon 28 U. S. C. sec. 1257(2). The following decisions sustain the jurisdiction of the Supreme Court to review the decree on appeal in this case:

Chicago, Rock Island & Pacific Ry. Co. v. Perry, 259 U. S. 548 at 551 (1921);
Home Insurance Co. v. Dick, 281 U. S. 397 at 407 (1929);
Whitfield v. Ohio, 297 U. S. 431 at 436 (1935);
Nickey et al. v. Mississippi, 292 U. S. 393 at 394 (1933).

THE STATUTE INVOLVED

Act No. 314 of Public Acts of 1915 of the State of Michigan, Chapter 5, as amended, (being Compiled Laws of 1948, Sec. 605.1 *et seq.;* Michigan Statutes Annotated Sec. 27.511 *et seq.*), which is set forth in Appendix C hereto.

Sections 2, 3, 5, and 19 of the said statute (Compiled Laws of 1948, Secs. 605.2, 605.3, 605.5 and 605.19; Mich. Stats. Ann. Secs. 27.512, 27.513, 27.515 and 27.529) provide as follows:

> Sec. 2. "When any misconduct, punishable by fine and imprisonment as declared in the last section, shall be committed in the immediate view and presence of the court, it may be punished summarily, by fine or imprisonment, or both, as hereinafter prescribed."
>
> Sec. 3. "When such misconduct is not so committed, the court shall be satisfied by due proof, by affidavit of the facts charged, and shall cause a copy of such affidavit to be served on the party accused, a reasonable time to enable him to make his defense, except in cases of disobedience to any rule or order requiring the payment of money, and of disobedience to any subpoena."

Sec. 5. "In all cases, other than that specified in the last section, the court shall either grant an order on the accused party, to show cause at some reasonable time, to be therein specified, why he should not be punished for the alleged misconduct, or shall issue an attachment to arrest such party, and to bring him before such court, to answer for such misconduct."

Sec. 19. "When any defendant arrested upon an attachment, shall have been brought into court, or shall have appeared therein in response to any order to show cause, he shall be permitted to file affidavits controverting or explaining the matters stated in the affidavits upon which such attachment was issued, or order to show cause made, within such reasonable time as the court shall allow, and the court may receive any affidavits, or oral proofs contradictory or confirmatory of the answers of the defendant, and upon all such affidavits and proof, the court shall determine whether the defendant has been guilty of the misconduct alleged."

QUESTIONS PRESENTED

(1) Whether Act No. 314 of Public Acts of 1915 of the State of Michigan, Chapter 5 (Compiled Laws of 1948, Sec. 605.1 *et seq.;* Michigan Stats. Ann. Sec. 27.511 *et seq.*), and particularly section 19 thereof (Compiled Laws of 1948, Sec. 605.19; Mich. Stats. Ann. Sec. 27.529), which was construed by the Michigan Supreme Court to authorize affidavits as evidence in contempt proceedings, so as to sustain convictions for alleged contempt thereunder, and to justify imprisonment and fines therefor, is unconstitutional under the Fourteenth Amendment to the United States Constitution as denying due process of law, in that it denies to an accused in a proceeding criminal in nature the opportunity to confront and examine the witnesses against him.

(2) Whether said statute as so construed is unconstitutional under the Fourteenth Amendment to the United States Constitution as denying due process of law, in that it imposes a burden of proof as to his innocence rather than a presumption in favor thereof on the accused in a contempt proceeding, criminal in nature, and equates the accusation with a presumption of guilt.

(3) Whether said statute as so construed is unconstitutional under the Fourteenth Amendment to the United States Constitution as denying due process of law in that in a contempt proceeding, criminal in nature, the accusation is itself deemed proof of the offense charged.

(4) Whether the appellants herein were denied due process of law under the Fourteenth Amendment to the United States Constitution in that in a contempt proceeding, criminal in nature, they were each found guilty as charged, sentenced to jail and/or to pay fines, though there was no oral testimony whatsoever of their guilt of the offense charged, and the only alleged "proof" consisted of those affidavits serving as the complaint against them.

STATEMENT

This case involves appeal from a decree of the Michigan Supreme Court affirming convictions of contempt as to these appellants.

The contempt proceedings arose out of a civil suit, brought on April 23, 1953, by Great Lakes Greyhound Lines, a Division of the Greyhound Corporation, a Delaware Corporation, against these appellants and others in the Circuit Court for the County of Wayne, In Chancery. In that suit plaintiff Greyhound alleged that a strike was then being conducted, improperly, by its maintenance and

repair employees who were represented by the appellant unions. The suit sought injunctive relief, temporary and permanent, against picketing by the named defendants (including each of these appellants) and others at various buildings of the plaintiff, including its motor bus garage on Fort Street in Detroit. Upon commencement of the suit, the plaintiff secured an *ex parte* restraining order, whose alleged violations led to these contempt convictions. That order forbade the "establishing, maintaining, aiding, [or] abetting the maintenance of a picket line" at the named places.

On the following morning, Friday, April 24, 1953, the plaintiff filed a petition and affidavit by its president, alleging violation of the restraining order by each of the defendants, including all the appellants, plus others. The plaintiff asked, and received, again *ex parte*, a "show cause" order directing the individuals therein named, and the labor unions, to show cause why they should not be cited for contempt for alleged violations of the restraining order. That order was made returnable the same day at 4:00 P. M.

Court convened at 4:00 P. M. At that time, one of the attorneys for the defendants asked an adjournment. He stated that he had not seen the bill of complaint, nor had he had any notice of the case till less than two hours earlier, nor had he spent more than a few minutes with his clients at which time he had "hastily glanced over the petition" respecting the alleged contempt, which he understood was "false and fraudulent." He stated he was unprepared and wanted an adjournment, for a further reason, to file appropriate papers for dismissal of the cause.

Adjournment was refused, the court stating the issue was simply whether the restraining order had been violated, but then broaching to the respective counsel the pos-

sibilities of inducing settlement of the respective clients' differences. After prolonged discussion, adjournment to the following morning was had, at which time an attorney for the plaintiff (with defense counsel absent) said settlement had been reached by the respective clients, and the plaintiff, pursuant to agreement of the parties, requested permission to withdraw the contempt proceedings. The court adjourned the matter till the following Friday, May 1, 1953, at which time, over objection by defense counsel, it ordered the plaintiff Greyhound to proceed with proofs of the alleged contempts, *though after the Court had consented to discontinuance of the cause proper*, while refusing to allow the withdrawal of the contempt proceedings.

Only two witnesses were called for the plaintiff, and none for the defendants. Their brief testimony, at the session of May 1, 1953, constituted all the testimony in the case.

It was in entirety that *some* individuals, identified by name, who are *not* the present appellants and who (with one exception not here involved) were not parties to the contempt proceeding did picket after the issuance of the restraining order at the enjoined location. *There was not a word of testimony mentioning appellants International Union, Doddie, or Nolan; their names do not appear in the transcript of testimony.* The only mention of the Local Union was on the placards, shown in photographic exhibits admitted over objection, which recited that the Local Union was on strike.

There was absolutely no other oral testimony or evidence in the contempt proceedings. The "facts" as set forth by the Michigan Supreme Court in its opinion, including particularly its bare conclusion, without supporting record references, at 341 Mich. 310 (Appendix, p. 20a, *infra*), to the effect that there was "competent oral testimony suffi-

cient to sustain a conviction," and including particularly, also, its opinion at pages 292-295, inclusive, of 341 Mich. (Appendix, pps. 1a-3a, *infra*), reciting alleged strike happenings and background together with contract background, are utterly without foundation in the record; what purports to be a summary of evidence adduced in the contempt proceeding amounts only to a *paraphrase of Greyhound's bill of complaint and the affidavits supporting the petition to cite for contempt.*

Following the declination of defense counsel to offer any testimony, and following timely motions to dismiss for various reasons, particularly for failure of the plaintiff to introduce evidence making out a case as to any of the respondents to the contempt proceeding, the trial judge found each of the appellants guilty of contempt for allegedly violating the restraining order. The two unions, the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, a voluntary unincorporated labor union, and Local Union 656 of said International Union were each fined $250.00. The individual appellants, Russell Nolan and A. James Doddie, were each fined $100.00 and sentenced to the Wayne County Jail for ten days. Sentence was suspended as to one John Szabo, also convicted, whose conviction was later reversed by the Michigan Supreme Court.

Application granting leave to appeal to the Michigan Supreme Court was thereafter made and granted. The Court affirmed the order of the Wayne County Circuit Court as to these appellants (and reversed as to another appellant, Szabo, before the Michigan Court), in decree dated November 29, 1954. The court approved under authority of Section 19 of the Michigan contempt statute the use of affidavits as evidence, as against contentions that such a construction of the statute was unconstitutional under the Fourteenth Amendment to the United States

Constitution. Application for rehearing was denied January 14, 1955. Execution of sentence as to all appellants has been stayed, pending the indicated appellate proceedings, by virtue of successive orders staying proceedings, including that of this Court, by Mr. Justice Reed, dated March 16, 1955.

How the Federal Question Is Presented

The federal questions here involved were raised in the statement of Reasons and Grounds of Appeal, filed January 29, 1954, in the trial court, in conjunction with the taking of appeal to the Michigan Supreme Court, particularly in paragraphs 13, 14, 15, 16, and 17 thereof. (Motion to dismiss had previously been made for the insufficiency of the oral evidence during the course of the contempt trial.) These questions were considered by the Michigan Supreme Court, in its opinion, and treated at 341 Mich. 309 and 310 (Appendix, pps. 18a-20a, *infra*). The federal questions were renewed in the appellants' application for rehearing before the Michigan Supreme Court, paragraphs 1 through 6, inclusive, thereof.

THE QUESTIONS ARE SUBSTANTIAL

The decision below by the Michigan Supreme Court is in direct conflict with the principles enunciated in *In Re Oliver*, 333 U. S. 257 (1948), as reaffirmed in *Sacher v. United States*, 343 U. S. 1 (1951), and as earlier stated in *Cooke v. United States*, 267 U. S. 517.

As stated in *Oliver*, and later and earlier decisions, due process of law in constructive contempt cases has been held to include as a minimum "the constitutional standards applicable to court proceedings in which an accused may be sentenced to fine or imprisonment, or both." *Oliver*,

at 265. And this without regard to a characterization of the proceeding as criminal, as opposed to civil. *Oliver*, p. 266, f.n. 13. Accordingly, the accused in constructive contempt proceedings has been held entitled to be advised of the charges against him, to have reasonable opportunity to defend, to be represented by counsel, to have the opportunity to summon witnesses in his behalf, to have a public hearing, and, in short, to have the "right to his day in court * * * [which] include[s], as a minimum, a right to examine the witnesses against him. * * *" *Oliver*, 273; 275, 276.

In the case at bar, as indicated, the last named right, particularly, of confrontation, has been denied. While the Michigan Court says, without citation to the record, that "There was competent oral testimony given sufficient to sustain a conviction," in fact there was absolutely none, and, indeed, the very names of three of these appellants were never mentioned in the contempt proceedings! The Michigan Court's conclusion that there was adequate proof must necessarily have come from the adoption, as constitutionally admissible evidence of guilt, of the affidavit which was here annexed to the petition to cite for contempt—even though such affidavit was never offered in proof against the defendants and was not subject to cross-examination, of course, in any event. In short, the complaint was held to prove the offense and to justify "default judgment" in a proceeding criminal in nature. And, since the Michigan Court says approvingly of the statute, in answer to our due process arguments to the contrary, that "Under our statute [Compiled Laws of 1948, Sec. 605.19; Mich. Stats. Ann. Sec. 27.529], the affidavit is evidence upon which the court can take notice of misconduct," the Michigan Court has here not merely approved the denial to appellants of constitutional rights under the Fourteenth

Amendment, but has founded such denial upon the Michigan statute. Accordingly, the present court has jurisdiction by appeal of this case under 28 U. S. C. Sec. 1257(2), in that a final decree by the Michigan Supreme Court has upheld the validity of the Michigan statute (Section 19), where there has been drawn in question its validity on the ground of its repugnancy to the United States Constitution. Moreover, it is clear that the Michigan decision cannot escape federal review on grounds that it is allegedly based on non-federal, alternative state grounds, such as non-reviewable findings of fact, for while it is acknowledged that ordinarily this court will not exert its jurisdiction merely to review a decision of a state court on a question of fact,

> "There are two major exceptions • • •'where a Federal right has been denied as the result of a finding shown by the record to be without evidence to support it; or where a conclusion of law as to a Federal right and a finding of fact are so intermingled as to make it necessary, in order to pass upon the Federal question, to analyze the facts.' *Fiske v. Kansas,* 274 U. S. 380, 385-6. And see *Creswill v. Grand Lodge,* 225 U. S. 246, 261; *Sterling v. Constantin,* 287 U. S. 378, 398. Pursuant to the latter exception, the Court feels itself free to make an independent examination of the facts when necessary to decide whether a person has been deprived by a state court of a fundamental right secured by the Constitution. *Norris v. Alabama,* 294 U. S. 587, 590; *Chambers v. Florida,* 309 U. S. 227, 228-9; *Ashcraft v. Tennessee,* 322 U. S. 143, 147-8; *Craig v. Harney,* 331 U. S. 367, 373-4." Stern and Gressman, *Supreme Court Practice,* 2nd Ed.—Revised Rules B.N.A. Inc., (1954).

Here, the very questions for review involve the constitutional admissibility as "evidence" of that which the Michigan Supreme Court must necessarily have used to sustain appellants' convictions—ex parte evidence, affidavits.

Not merely is review believed necessary to correct the present shocking miscarriage of justice, which here entails not merely a denial of the right of confrontation, but also a naked example of guilt by accusation, but review appears vital to clarify the confused law of 48 states on the issues at hand. The questions here involved, respecting constitutional evidence in constructive contempt proceedings, are of national concern. Every state deals with indirect contempt proceedings of one form or another. Almost every state provides statutory contempt procedures similar to Michigan's, generally requiring for the initiation of proceedings respecting indirect contempt the filing of an affidavit charging the matters complained of. Many states, like New York (*29 McKinney's Consolidated Laws of New York, Judiciary,* Article 19, Section 769, page 659)[1] and Wisconsin (*Statutes,* 1949, Sec. 295.12, page 2897),[2] have provisions substantially identical to Michigan's Section

---

[1] "When the accused is produced, by virtue of a warrant, or a writ of habeas corpus, or appears upon the return of a warrant, the court, judge, or referee, must, unless he admits the offense charged, cause interrogatories to be filed, specifying the facts and circumstances of the offense charged against him. The accused must make written answers thereto, under oath, within such reasonable time as the court, judge, or referee allows therefor; and either party may produce affidavits, or other proofs, contradicting or corroborating any answer. Upon the original affidavits, the answers, and subsequent proofs, the court, judge, or referee must determine whether the accused has committed the offense charged."

[2] "When any defendant shall have been brought into court by virtue of an attachment, or on such writ of habeas corpus, or shall have appeared upon the return of an attachment the court shall, unless he admits the offense charged, cause interrogatories to be filed specifying the facts and circumstances alleged against the defendant and requiring his answers thereto; to which the defendant shall make written answers on oath within such reasonable time as the court shall allow; and the court may receive any affidavits or other proofs, contradictory of the answers of the defendant or in confirmation thereof, and upon the original affidavits, such answers and such subsequent proof shall determine whether the defendant has been guilty of the misconduct alleged."

19, which the Michigan Supreme Court in the present case has construed to justify the use of affidavits in evidence. Still other states, with or without statute, have expressly approved the use of affidavits in contempt proceedings,[3] most often upon the reasoning that the accused in a "civil" contempt proceeding, which itself is variously defined and is amorphous in classification, is not entitled to those constitutional rights traditionally associated with ordinary criminal proceedings. Other states have so ruled, i.e. in favor of the use of affidavits, upon the convenient, if evasive, explanation that contempt proceedings are *sui generis*. But still other states for constitutional reasons related to right of confrontation, have forbidden the use of affidavits as evidence.[4]

While almost all of the decisions, whether permitting or denying the use of affidavits, antedate *Oliver*, they stand, except as impliedly overruled by *Oliver* and its language on the right of confrontation generally, in mass and hopeless conflict; and the extent to which the right of confrontation is available in constructive contempt proceedings, without respect to criminal-civil contempt distinctions, to specifically preclude the use of affidavits in lieu of oral proofs with burden on the prosecution, is a matter of national confusion and concern.

While here the wrong is particularly evident, since under any of traditional tests there is clearly involved alleged criminal, as distinguished from civil, contempt—the prosecution was at the instance and orders of the trial judge, for whom Greyhound counsel then and thereafter acted; it came following resolution and settlement of the

---

[3] See cases assembled in L.R.A., 1919b, p. 118.

[4] e. g.: *Staley v. South Jersey Realty Company*, N. J. Ct. of Errors and Appeals, 83 N. J. Eq. 300, 90 A. 1042 (1914); *State ex rel. Russell v. Dist. Court* (1895), 60 Minn. 478, 62 N. W. 831.

underlying civil controversy and the agreement of the court to dismiss the civil suit, so that the only conceivable purpose of the contempt proceedings was punitive and not remedial—*Gompers v. Buck's Stove and Range Company*, 221 U. S. 418; it concerned the alleged violation of negative restraints; and it resulted in the imposition of fixed fines and jail sentences—the general need for the clarification of constitutional aspects of evidence in indirect contempt proceedings itself makes appropriate review by this court.[5]

We believe, therefore, that the questions presented by this appeal are substantial, and they are of public importance.

Respectfully submitted,

HAROLD A. CRANEFIELD,
Attorney for Appellants,
8000 East Jefferson Avenue,
Detroit 14, Michigan;

ROTHE, MARSTON, MAZEY,
SACHS & O'CONNELL,
Attorneys of Counsel,
3610 Cadillac Tower,
Detroit 26, Michigan.

Dated: March 31, 1955.

---

[5] If it is deemed by the court that the questions here involved pertain strictly to matters of denial of individual liberties, without respect to the aegis of state statute, argued repugnant to Federal law, but held valid, it is respectfully urged that by reason of the importance of the constitutional issues involved, the court deem the present jurisdictional statement to be in the nature of an application for certiorari under 28 U. S. C. Sec. 1257(3), and such application be entertained. 28 U. S. C. Sec. 2103. *Charleston Federal Savings & Loan Association et al. v. Alderson*, 324 U. S. 182 at 187 (1944).

APPENDIX A

Opinion of the Michigan Supreme Court

[341 Mich. 292-310]

SHARPE, J. This is an appeal in the nature of certiorari from an order adjudging 5 defendants, 2 labor unions and 3 individuals, guilty of contempt of court. Plaintiff corporation is a common carrier of passengers and related traffic by motor vehicle, with various routes within the United States, including the State of Michigan, and in connection therewith in Michigan plaintiff maintains its principal offices at 2301 West Lafayette boulevard, Detroit, Michigan.

Plaintiff's driver employees are members of and are represented exclusively by the International Union, Amalgamated Association of Street, Electrical, Railway and Motor Coach Employees of America, A.F. of L.

Plaintiff's maintenance employees are members of the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, C.I.O., and Locals 656, 563 and 417 of said union.

Under date of December 4, 1950, plaintiff corporation, the International Union and Local Union 656, together with 2 other local unions, entered into an agreement applicable to plaintiff's employees at each of its garages, including its Detroit garage. The agreement became effective May 1, 1950, and expires May 1, 1955. The agreement provides, in part, as follows:

"Article 1

"Sec. 1. The company agrees to recognize the union as the exclusive bargaining agency for its maintenance em-

ployees (except supervisory employees * * *) for the purpose of collective bargaining. * * *

"Sec. 2. Employees covered by this agreement at the time it becomes effective shall be required as a condition of continued employment to be members of the union on and after the 30th day following such effective date. New employees hired after the date of this agreement or employees on leave of absence or laid off as of the date of this agreement shall be members of the union on and after 30 days following the beginning of such new employment or following the return to work after such leave of absence or layoff as a condition of continued employment.

"Article 2 * * *

"Sec. 2. Accredited representatives of the local union shall be employees of the company covered by this agreement. The union agrees to furnish the company in writing, a list of all officers, committees, stewards, and shift committeemen, and to notify the company, in writing, of all changes.

"Article 3

"Sec. 1. Effective from and after the date of the within agreement, the company shall deduct from the last pay of each month, the union dues for the current month and promptly remit the dues to the appropriate official of the union of all the members of the union who individually or collectively certify or have previously certified in writing that they authorize such deductions, except that dues changes shall be limited in number so as not to exceed 2 in pay records annually.

"Article 4 • • •

"Sec. 2. The company nor the union will in no way interfere with or interrupt production because of any grievance until an earnest effort has first been made by both parties to settle the dispute through the grievance procedure provided for in this agreement."

The aforesaid agreement was executed, among others, by the following: Great Lakes Greyhound Lines, by R. W. Budd, President; International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, C.I.O., Locals 656, 563 and 417; Leo H. Russell; A. James Doddie, International Representative, Region 1-A.

It appears that on April 23, 1953, there were no labor disputes existing between plaintiff corporation and the International Union or its Locals 563 or 417, and only one grievance existing between plaintiff corporation and Local 656, concerning ventilation at plaintiff's Detroit garage, which grievance was being handled in conformity with the aforesaid agreement.

On April 23, 1953, defendants, International Union and Locals 656, 563 and 417, went on strike at approximately 4:30 a.m., resulting in plaintiff's maintenance employees ceasing all work in all of plaintiff's garages, and establishing picket lines at all of said garages. The same day, April 23, 1953, plaintiff filed its bill of complaint in the circuit court of Wayne county. The bill of complaint alleges:

"That by reason of the said unlawful strike and picketing plaintiff has been unable, since the institution of the picket lines, as hereinbefore provided, to conduct its business operations as a common carrier for hire of passengers in interstate and intrastate commerce and that, as a result tens of thousands of persons who daily depend upon the common carrier services of this plaintiff have been

greatly harmed and damaged through being unable to avail themselves of such services and many communities served by the lines of plaintiff, both in interstate and intrastate commerce have no other means of public transportation besides that provided by plaintiff; that plaintiff is required to maintain huge investments in equipment, terminals, garage facilities, and to undergo numerous fixed expenses in the conduct of its common carrier business and the calling of the said illegal strike and the continuation thereof impairs plaintiff's investment not only in motor bus equipment, materials, supplies, terminals, and garages, but in addition, impairs the value of its operating authority as issued to it by the commissions as aforesaid in that it is the duty and obligation of plaintiff under law to maintain continuous and adequate operations thereunder, under penalty of forfeiture, and that in addition to the foregoing, plaintiff's good will, built up over the period of years and based upon the reputation of rendering good, adequate, necessary and continuous service is placed in the position of positive jeopardy. * * *

"Wherefore, and inasmuch as plaintiff is without adequate remedy within the premises except in a court of equity, plaintiff therefore prays as follows:

"(1) That the said defendants and each of them be required to make full, true and correct answer hereto.

"(2) That the said defendants and each of them and all of said officers and members of the said defendants, and all persons to whom knowledge of the same may come by decree of this honorable court may be promptly enjoined from further commission of any of the acts hereinabove complained of and that they may be enjoined and restrained from the date of filing this bill of complaint, and permanently thereafter from committing any of the following acts:

"(a) From establishing, maintaining, aiding, abetting the maintenance of a picket line at any of the following locations:

"1. Plaintiff's garage located between 15th and 17th streets and Lafayette boulevard and Fort street in the city of Detroit, Michigan;

"2. Plaintiff's bus storage lot located between Howard street and Lafayette boulevard and 14th and 15th streets in the city of Detroit, Michigan;

"3. Plaintiff's garage located at 191 North Gratiot in the city of Mt. Clemens, Michigan;

"4. Plaintiff's garage located at 391 South Woodward avenue in the city of Birmingham, Michigan, and

"5. Plaintiff's garage located at 600 Pennsylvania avenue in the city of Wyandotte, Michigan.

"(b) From interfering with, by threats of violence or otherwise, the operation of plaintiff's motor buses in the conduct of their normal course of business; from threatening, intimidating or in any manner interfering with the employees of plaintiff in such manner as to interfere with their pursuit of their employment; from interfering with, by picketing, by threats, by violence or otherwise, the traveling public seeking to utilize the services or facilities of plaintiff."

Upon the filing of the bill of complaint, an order to show cause and a temporary restraining order was issued, with directions that a copy of the bill of complaint and a copy of the show cause and restraining order be served upon defendants at least 4 days prior to May 1, 1953. The restraining order provided that in the meantime, and until the further order of the court, said defendants and others be restrained and enjoined:

"(a) From establishing, maintaining, aiding, abetting the maintenance of a picket line at any of the following locations:

"1. Plaintiff's garage located between 15th and 17th streets and Lafayette boulevard and Fort street in the city of Detroit, Michigan;

"2. Plaintiff's bus storage lot located between Howard street and Lafayette boulevard and 14th and 15th streets in the city of Detroit, Michigan;

"3. Plaintiff's garage located at 191 North Gratiot in the city of Mt. Clemens, Michigan;

"4. Plaintiff's garage located at 391 South Woodward avenue in the city of Birmingham, Michigan, and

"5. Plaintiff's garage located at 600 Pennsylvania avenue in the city of Wyandotte, Michigan.

"(b) From interfering with, by threats of violence or otherwise, the operation of plaintiff's motor buses in the conduct of their normal course of business; from threatening, intimidating or in any manner interfering with the employees of plaintiff in such manner as to interfere with their pursuit of their employment; from interfering with, by picketing, by threats, by violence or otherwise, the traveling public seeking to utilize the services or facilities of plaintiff."

Upon service of the restraining order, all picketing stopped at plaintiff's garages located at Wyandotte, Birmingham, and Mt. Clemens, but continued at plaintiff's Detroit garage, as well as its bus storage lot in Detroit, Michigan. The record shows that personal service of the bill of complaint, order to show cause and temporary restraining order were served on Russell Nolan on April 23, 1953, at 6:45 p.m.; that on the same day at 5:50 p.m., like

service was made on Local Union No. 656 by personally delivering true copies of the bill of complaint, order to show cause and temporary restraining order on Leo H. Russell, president of Local No 656; that at 6:45 p.m., on said day like service was made on Charles Luckett; that on said day at 5:50 p.m., like service was made on Leo H. Russell; that on April 24, 1953, at 9:45 a.m., like service was made on A. James Doddie, international representative of the International Union, as well as on said A. James Doddie personally.

On April 24, 1953, plaintiff corporation, by R. W. Budd, its president, filed a petition in said Wayne county circuit court against defendants herein to punish for contempt for disobeying the temporary restraining order. The petition alleges:

"That copies of the said restraining order were personally served upon Leo H. Russell, president of defendant, Local Union No 656; A. James Doddie, international representative of defendant, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, a voluntary unincorporated labor union; Charles Luckett and Russell Nolan, members of the grievance committee of defendant Local Union No 656; and upon certain of the other defendants named therein;

"That the said above named defendants, Leo H. Russell, A. James Doddie, Charles Luckett and Russell Nolan, and the said International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, and Local Union No 656 of International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, and certain individuals on picket lines, who are members of said defendant, International Union, United Automobile, Aircraft and Agricultral Implement

Workers of America, CIO, and defendant, Local Union No 656, including but not limited to Daniel Murray, Donald Pomaville, Harrison Smith, Bennett Field, and John Szabo, well knowing the premises but wholly disregarding the said temporary restraining order, have continuously since the issuance of said temporary restraining order maintained a picket line at plaintiff's garage located between 15th and 17th streets and Lafayette boulevard and Fort street, in the city of Detroit, Michigan, and the plaintiff's bus storage lot located between Howard street and Lafayette boulevard and 14th and 15th streets, in the city of Detroit, Michigan, in contempt of said restraining order and against the peace and dignity of the State.

"Wherefore, petitioners pray the issuance of summary process against the said Leo H. Russell, A. James Doddie, Charles Luckett and Russell Nolan, and the said International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, a voluntary unincorporated labor union; and Local Union No 656 of International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, and certain individuals on picket lines, who are members of said defendant, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, and defendant Local Union No 656, including but not limited to Daniel Murray, Donald Pomaville, Harrison Smith, Bennett Field, and John Szabo, and their members, agents, servants and employees, requiring them to appear before this court on the .... day of ..... A.D. 1953, at ..... o'clock ...m., and show cause, if any, why they should not be adjudged guilty of contempt.

"This petition is based upon the files and records in said cause, and upon the affidavit attached hereto of R. W. Budd, President of Great Lakes Greyhound Lines, a division of the Greyhound Corporation."

Upon the filing of the above petition, an order to show cause why certain defendants should not be punished for contempt of the temporary restraining order was issued. The above order required that it be served by 3 p.m., on April 24, 1953, and said defendants were to appear and show cause by 4 p.m., or soon thereafter, on April 24, 1953, as to why they should not be punished for violating the terms of the restraining order. Service of said contempt show cause order was made upon the following named parties, at the following specified date and times: A. James Doddie, as representative of International Union, at 1:50 p.m., on April 24, 1953. Mr. Doddie was also personally served at the same time and date; Russell Nolan, at 2:20 p.m., on April 24, 1953; and John Szabo, at 2:18 p.m., on April 24, 1953.

Hearing on the order to show cause was held on April 24, 1953, before Judge Frank B. Ferguson, at which time the court asked the defendants:

"Do the defendants want to show cause why they should not be punished for contempt?"

No attempt to show cause why any defendant should not be punished for contempt was made by any of the defendants. At this hearing the court suggested that the pickets be withdrawn and negotiations entered into for the purpose of attempting to settle the strike. At the suggestion of counsel for defendants the cause was adjourned to Saturday, April 25, 1953. On April 25, 1953, plaintiff's attorney advised the circuit court that the representatives of plaintiff and defendants had met and that the strike was settled.

On May 1, 1953, counsel for both parties appeared before the court and requested permission to dismiss the principal case as well as the contempt proceedings. The court denied the request, stating:

"The injunction of this court should have been obeyed. Whether or not the court had jurisdiction is not important. The court assumed jurisdiction in this matter and restrained picketing. Whether the court was right or wrong in that order is not material. The order stands and picketing became unlawful. The defendants concerned in this case decided for themselves whether or not they would continue picketing. They decided for themselves whether this court had jurisdiction. I don't see how a court can permit its order to be disobeyed as this order was. It weakens the entire form of government we have in this country if anyone is permitted to violate the order of the court.

"Personally I am not inclined to permit the plaintiff to withdraw its citation for contempt of court. If there has been a violation of that injunction this court should see to it that those who violated its order are found guilty. I will therefore deny your motion to withdraw your citation for contempt."

Following the denial of the request, plaintiff produced Archie Shakespeare, a photographer, who identified 4 photographs which he personally took at the Detroit garage of plaintiff located between 15th and 17th streets, and between Lafayette boulevard and Fort street in Detroit, showing picketing at said location between the hours of 10 a.m., and 12 o'clock noon on Friday, April 24, 1953. Donald Coutts, a witness produced by plaintiff, testified that he is the garage superintendent of plaintiff at its Detroit garage; that he was at the garage at 5:15 a.m., on April 23, 1953, and observed pickets at the garage, and that he also observed pickets at the garage on April 24 and 25, 1953. He also testified that he was present when the photographs were taken. The witness identified Clar-

ence Sylvester, Warren Manning, George Tauros, Mr. Szabo and Bennett Fields from the photographs shown him, and also testified that they were members of the union. At the close of this testimony, defendants' counsel moved for a dismissal of the proceedings for the reason that these defendants had not been identified as having had knowledge of the restraining order. The court denied the motion and stated:

"I will find Local Union 656 of International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, guilty of contempt of this court for violation of the restraining order. I also find A. James Doddie, international representative of the International Union, guilty of contempt of court. • • •

"I will find Russell Nolan guilty of contempt of this court; also the Local Union 656 and the International Union. I find John Szabo guilty of contempt of court. He has been served and he has been mentioned as one of the pickets. As far as Mr. Szabo is concerned, he is a worker, an employee, and he takes orders from his union. Had [he] been told to withdraw from the picket line, I have every reason to assume that he would; but I assume he was not told to withdraw. In his case I am going to suspend sentence.

"As far as the International Union is concerned and the Local CIO is concerned, I am going to fine them $500 each for contempt of this court's injunction.

"As far as the individuals, the officers are concerned, they are each sentenced to 10 days in the county jail and also fined $100 each."

Upon leave being granted, defendants appeal. The law in the State of Michigan applicable to the authority of a judge of a court of record to impose punishment for contempt of court is stated as follows:

"Sec. 1. Every court of record shall have power to punish by fine or imprisonment, or both, persons guilty of any neglect or violation of duty or misconduct, in the following cases, and no others: • • •

"3. • • • for disobedience of any process of such court, or any lawful order thereof, or of any lawful order of a judge of such court." CL 1948, §605.1 (Stat Ann §27.511).

"Sec. 3. When such misconduct is not so committed [*i.e.* in the court's presence, as described in section 2], the court shall be satisfied by due proof, by affidavit of the facts charged, and shall cause a copy of such affidavit to be served on the party accused, a reasonable time to enable him to make his defense, except in cases of disobedience to any rule or order requiring the payment of money, and of disobedience to any subpoena." CL 1948, §605.3 (Stat Ann §27.513).

"Sec. 19. When any defendant arrested upon an attachment, shall have been brought into court, or shall have appeared therein in response to any order to show cause, he shall be permitted to file affidavits controverting or explaining the matters stated in the affidavits upon which such attachment was issued, or order to show cause made, within such reasonable time as the court shall allow, and the court may receive any affidavits, or oral proofs contradictory or confirmatory of the answers of the defendant, and upon all such affidavits and proof, the court shall determine whether the defendant has been guilty of the misconduct alleged." CL 1948, §605.19 (Stat Ann §27.529).

In coming to our conclusions upon the issues involved we have in mind that this is an appeal in the nature of certiorari. In reviewing a conviction for contempt in *In re Gilliland,* 284 Mich 604, 612, we said:

"On certiorari we do not pass on the weight of the evidence or the credibility of witnesses. There being some evidence to support the finding of the trial judge, we cannot disturb it on certiorari."

It is urged by defendants that Local Union No 656 was not served with the contempt proceedings and show cause order so as to become a party to the contempt proceedings. CL 1948, §613.29 (Stat Ann §27.759), PA 1915, No 314 (the judicature act), provides for the manner of service on such voluntary associations as follows:

"Process issued from any court of record against a corporation, partnership association or unincorporated voluntary association, may be served upon any officer, director, trustee or agent thereof, or by leaving same during regular office hours at the office of such corporation, partnership association or unincorporated voluntary association, with any person in charge thereof."

The record shows that a copy of the temporary restraining order was served on Leo H. Russell, president of Local Union No 656, on April 23, 1953, at 5:50 p.m.; that the local union was a party to the principal suit and required to obey the terms of the temporary restraining order; that Leo H. Russell signed the employment agreement entered into between plaintiff, the International Union and the local union, and that he signed on behalf of the local union as one of its representatives. We note that the agreement requires, "Accredited representatives of the local union shall be employees of the company covered by this agreement." Moreover,, it appears that Rus-

sell Nolan was served with a copy of the petition to punish for contempt and that he, as a member of the grievance committee of the local, is a representative of the local union. It also appears that during the proceedings before the trial court, Mr. Rothe, present counsel for defendants, participated in a discussion with the court as follows:

"*The Court:* Would both sides be willing to enter into this kind of arrangement, that negotiations will be had between the parties; the pickets will be withdrawn pending that negotiation; that the employers will not in any way try to perform the service these employees are now performing, and that the employers may withdraw their buses from the garage and parking lot without any interference during the negotiations?

"*Mr. Rothe:* I can't honestly answer that question, your honor, because I haven't talked with any of the officers of the union.

"*The Court:* You have here 1 or 2 that have been served.

"*Mr. Brady:* I should like to say on the record, as far as the company is concerned the suggestion of your honor is acceptable. * * *

"*Mr. Rothe:* After a brief discussion I am informed they are perfectly willing to sit down and start negotiating immediately. They are fearful, however, as to one suggestion your honor made and this one they cannot agree with because they say that is the crux of the case. They say they are perfectly willing to begin negotiating if the matter be ordered to remain in status quo; where it now is. It is possible if the pickets are taken out the company will stall and not negotiate in good faith. They will be where they started. That is the only pressure there is here on the company to bring about a settlement. But

if your honor will enter such an order we will begin negotiating in good faith and withdraw the pickets immediately. * * *

"*Mr. Rothe:* If the court please, it has been suggested —we discussed this and it seemed that if it is agreeable on the part of Mr. Budd, that they can sit down for an hour and they can iron out the difficulities involved here— what the union wants and what Mr. Budd wanted to give them. He has assured us that the health condition which exists will be—provisions will be made to eliminate it and the steps to be taken will satisfy the union. Now, upon that understanding counsel wants the matter adjourned until tomorrow."

In *Smilgus v. Smilgus,* 328 Mich 19, 22, we said:

"Further, without obtaining any ruling by the trial court, defendant and his counsel appeared at the hearing on the petition, cross-examined plaintiff's witnesses, defendant testified in his own behalf, and offered other testimony. Having thus actually submitted to the jurisdiction of the court, appellant could not thereafter challenge the validity of the service of notice of hearing on the ground that the court did not obtain 'jurisdiction over the person of the defendant.'"

In our opinion there was proper service upon the local union, and under the facts in this case the union was properly before the court and subject to its orders. It is also urged that the order of the court finding defendants guilty of contempt is not supported by the evidence. We note that on the trial of the contempt proceedings, defendants appeared in it by their counsel. Counsel filed no apearance, and no sworn answer or counteraffidavits were filed by defendants.

The method of procedure is outlined by PA 1915, No 314, ch 5, §19 (CL 1948, §605.19 [Stat Ann §27.529]), quoted above. The trial court had before it the sworn bill of complaint in the principal cause, the petition to punish for contempt, and the affidavit attached thereto. He also had the benefit of pictures showing a violation of the restraining order and the testimony of the garage superintendent who identified the men in the pictures. In *Smith v. Waalkes*, 109 Mich 16, 22, we said:

"The only remaining question to discuss is, was it necessary, before the court could dispose of the contempt proceedings, to frame interrogatories and take proofs? In answer to the petition that he be punished for contempt, Waalkes filed a sworn answer, in which he 'states the facts and circumstances in said cause to be as follows.' He then recites the facts, which do not differ materially from what was recited in the petition, but seeks to justify his action in the way hereinbefore stated. No request was made by defendant to have interrogatories framed, or for an order of reference. The case was heard and disposed of upon the pleadings and proceedings hereinbefore stated. There was no dispute about what occurred. The pleadings, including the sworn statement of defendant, Waalkes, show just what was done. They showed the issuing of the writ of injunction, its personal service upon Waalkes, its violation, the manner in which it was violated, the extent of its violation, and its effect upon the property rights of the complainant. The defense in the contempt proceeding did not grow out of disputed facts, but was purely a question of law, in relation to which the defendant was mistaken. Judge Grove had all the facts before him which could have been brought out by a reference to a commissioner. He was as well qualified to dispose of the proceedings without the framing of interrogatories as he would have been with them."

In our opinion there was competent evidence to support the finding of fact of the trial court to the effect that defendants, except John Szabo, were guilty of violating the restraining order.

Defendants urge that there is no testimony respecting alleged violations by the International Union. The record shows that a copy of the restraining order was served on A. James Doddie, an international representative of the International Union, individually and as international representative. It appears that when the agreement of December 4, 1950, was entered into A. James Doddie represented the International Union and signed the agreement as its agent. It also appears that A. James Doddie was served with a copy of the bill of complaint, the order to show cause, the temporary restraining order, and a copy of the petition to punish for contempt, individually and as international representative; moreover, the International Union appeared in the proceedings before the trial court through their counsel. Under these circumstances, the International Union is estopped to deny participation in these proceedings.

It is urged that the conviction of John Szabo should be set aside for the reason that there was no testimony showing service of the temporary restraining order on him or any personal knowledge on his part that any restraining order had been issued against anyone. It appears that Szabo was a member of the union and had picketed after the issuance of the restraining order. He was not a party to the original suit, but was served with a copy of a petition to punish for contempt for disobeying the temporary restraining order. The record fails to show that Szabo was served with a copy of the restraining order, nor do we find any evidence that Szabo had any knowledge of the

restraining order. Many jurisdictions adhere to the rule that one who violates an injunction is guilty of contempt, although he is not a party to the injunction suit, if he has notice or knowledge of the injunction order, and is within the class of persons whose conduct is intended to be restrained, or acts in concert with such a person. See 15 ALR 386.

In 17 CJS, Contempt, §18, pp 23, 24, it is said:

"Unless the circumstances are such as to render service of notice or knowledge thereof unnecessary, a person cannot be brought into contempt for not complying with an order or decree of court unless personal service thereof has been made on him, or unless he has had actual notice of the making of such order or of the rendition of such judgment or decree. Service of a copy of the order is not required where the person disobeying it had actual knowledge of its existence. Accordingly, although no copy is served on him, one in court when an order was made is bound thereby; but an announcement by the court, while neither a party nor his counsel is present, that the party will be required to do a certain act does not furnish basis for contempt proceedings for failure to comply therewith."

The failure to show proof of service of the restraining order upon Szabo, or evidence that he knew of the issuance of the restraining order, compels us to reverse his conviction.

It is also urged that defendants were denied due process of law and they rely on *In re Oliver*, 333 US 257 (68 S Ct 499, 92 L ed 682), in support of their contention. In that case the court said (p 275):

"Except for a narrowly limited category of contempts, due process of law as explained in the *Cooke Case* requires that one charged with contempt of court be advised of the charges against him, have a reasonable opportunity to meet them by way of defense or explanation, have the right to be represented by counsel, and have a chance to testify and call other witnesses in his behalf, either by way of defense or explanation." (Reference to *Cooke v. United States,* 267 US 517 [45 S Ct 390, 69 L ed 767].)

Were the defendants advised of the charges against them? The bill of complaint, the temporary restraining order, the petition to show cause why they should not be punished for contempt, and the affidavit of R. W. Budd, president of plaintiff corporation, were a part of the court records in this case and accessible to defendants. The answer to this question must be in the affirmative. All defendants were represented by counsel. They had an opportunity to testify and call witnesses in their behalf. They chose not to do so. Did defendants have a reasonable opportunity to meet the charges by defense or explanation? The amount of time necessary to meet or explain charges depends upon the nature of the charge. In the case at bar the charge was that defendants, since the issuance of the temporary restraining order, maintained a picket line at plaintiff's garage located between 15th and 17th streets and Lafayette boulevard and Fort street in the city of Detroit. This issue presents a question of fact that could have been denied or affirmed by defendants. The trial court gave them an opportunity to present their case, but they declined. The show cause order was adjourned from April 25, 1953, to May 1, 1953, at which time the defendants were given a reasonable opportunity to deny the charge or offer such explanation as they may have had.

It is also urged, as a reason why defendants were not afforded due process of law, that the court took into consideration the affidavit of R. W. Budd. We do not know if the trial court relied upon the Budd affidavit or the testimony given by the 2 witnesses, or both. Under our statute the affidavit is evidence upon which the court can take notice of misconduct. However, there was competent oral testimony given sufficient to sustain a conviction. We are of the opinion that defendants were not denied due process of law. The convictions are affirmed, with the exception of John Szabo, which is reversed.

BUTZEL, C. J., and CARR, BUSHNELL, BOYLES, REID, DETHMERS, and KELLY, JJ., concurred.

APPENDIX B

Decree of the Michigan Supreme Court

At a Session of the Supreme Court of the State of Michigan, Held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the twenty-ninth day of November in the year of our Lord one thousand nine hundred and fifty-four.

Present the Honorable Henry M. Butzel, Chief Justice, Leland W. Carr, George E. Bushnell, Edward M. Sharpe, Emerson R. Boyles, Neil E. Reid, John R. Dethmers, Harry F. Kelly, Associate Justices.

SUPREME COURT ORDER AFFIRMING JUDGMENT OF CIRCUIT COURT AS TO INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO, LOCAL UNION NO. 656; A. JAMES DODDIE AND RUSSELL NOLAN AND REVERSING AND VACATING JUDGMENT OF CIRCUIT COURT AS TO DEFENDANT, JOHN SZABO

(Filed January 18, 1955)

Great Lakes Greyhound Lines,
Plaintiff,
v.
International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO; Local Union No. 656; A. James Doddie, Russell Nolan and John Szabo,
Defendants and Appellants.

Chancery 503274

No. 46102.

The record and proceedings in this cause having been brought to this Court by appeal in the nature of certiorari from the Circuit Court for the County of Wayne, in Chancery, and from an order adjudging defendants guilty of a contempt of court, and the same, and the grounds of appeal specified therein having been seen and inspected and duly considered by the Court, and it appearing to this Court that in said record and proceedings, and in the giving of judgment in said Circuit Court as to defendants International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO; Local Uuion No. 656; A. James Doddie and Russell Nolan, there is NO ERROR, It is therefore ordered and adjudged that the judgment of said Circuit Court for the County of

Wayne, in Chancery, as to said defendants Internatio
Union, United Automobile, Aircraft and Agricultural I
plement Workers of America, CIO, Local Union No. 6
A. James Doddie and Russell Nolan, be and the same
hereby in all things affirmed. It is further ordered a
adjudged that the judgment of the Circuit Court for t
County of Wayne, in Chancery, as to defendant Jo
Szabo, be and the same is hereby reversed and vacate

State of Michigan—ss.

I, Hugh H. Carpenter, Clerk of the Supreme Court
the State of Michigan, do hereby certify that the foregoi
is a true and correct copy of an order entered in said co
in said cause; that I have compared the same with t
original, and that it is a true transcript therefrom, and t
whole of said original order.

In Testimony Whereof, I have hereunto set my hand a
affixed the seal of said Supreme Court at Lansing, th
13th day of January in the year of our Lord one thousa
nine hundred and fifty-five.

Hugh H. Carpenter,

(Seal) Cle

APPENDIX C

The Statute Involved

Act No. 314 of Public Acts of 1915 of the State of Michigan, Chapter 5, as amended, (being Compiled Laws of 1948, Sec. 605.1 et seq., Volume 4, page 12151 Michigan Statutes Annotated Sec. 27.511 et seq.).

SECTION 1. Every court of record shall have power to punish by fine or imprisonment, or both, persons guilty of any neglect or violation of duty or misconduct, in the following cases, and no others: *Provided,* That in proceedings for contempt arising out of the publication of any news, information or comment concerning a court of record, except the supreme court, or any case pending therein or any judge thereof, the defendant shall have the right to have said proceedings heard by the judge of another court of record:

1. Disorderly, contemptuous, or insolent behavior, committed during its sitting, in its immediate view and presence, and directly tending to interrupt its proceedings, or to impair the respect due to its authority;

2. Any breach of the peace, noise or disturbance, directly tending to interrupt its proceedings;

3. All attorneys, counselors, clerks, registers, sheriffs, coroners, and all other persons in any manner duly elected or appointed to perform any judicial or ministerial services, for any misbehavior in such office or trust, or for any wilful neglect or violation of duty therein; for disobedience of any process of such court, or any lawful order thereof, or of any lawful order of a judge of such court, or of any officer authorized to perform the duties of such judge;

4. Parties to suits for putting in fictitious bail or su
ties, or for any deceit, or abuse of the process or proce
ings of the court;

5. Parties to suits, attorneys, counselors, and all oth
persons, for the nonpayment of any sum of money order
by such court to be paid, in cases where by law executi
cannot be awarded for the collection of such sum; the d
obedience of or refusal to comply with any order of su
court for the payment of alimony, either permanent
temporary, or costs made in any suit for divorce or s
arate maintenance; and any other disobedience to any la
ful order, decree or process of such court;

6. All persons for assuming to be officers, attorn
or counselors of any court, and acting as such without
thority; for rescuing any property or persons, which sh
be in the custody of an officer by virtue of process issu
from such court; for unlawfully detaining any witness
party to a suit, while going to, remaining at, or returni
from the court where such suit shall be pending for tri
and for any other unlawful interference with or resista
to the process or proceedings in any action;

7. All persons summoned as witnesses for refusal
neglect to obey such summons, or to attend or to be swo
or when so sworn to answer any legal and proper int
rogatory;

8. Persons summoned as jurors in any court, for
properly conversing with any party to a suit to be tr
at such court, or with any other person in relation to
merits of such suit; for receiving communications from
such party, or from any other person in relation to
merits of such suit, without immediately disclosing
same to the court;

9. All inferior magistrates, officers and tribunals, for disobedience of any lawful order or process of a superior court, or for proceeding in any cause or matter contrary to law, after such cause or matter shall have been removed from their jurisdiction;

10. The publication of a false or grossly inaccurate report of its proceedings; but no court can punish as a contempt the publication of true, full and fair reports of any trial, argument, proceedings or decision had in such court;

11. All other cases where attachments and proceedings as for contempts have been usually adopted and practiced in courts of record to enforce the civil remedies of any party, or to protect the right of any such party.

SECTION 2. When any misconduct, punishable by fine and imprisonment as declared in the last section, shall be committed in the immediate view and presence of the court, it may be punished summarily, by fine or imprisonment, or both, as hereinafter prescribed.

SECTION 3. When such misconduct is not so committed, the court shall be satisfied by due proof, by affidavit of the facts charged, and shall cause a copy of such affidavit to be served on the party accused, a reasonable time to enable him to make his defense, except in cases of disobedience to any rule or order requiring the payment of money, and of disobedience to any subpoena.

SECTION 4. When any rule or order of the court shall have been made for the payment of costs, or any other sum of money, and proof by affidavit shall be made of the personal demand of such sum of money, and of a refusal to pay it, the court may issue a precept to commit the person so disobeying to prison, until such sum, and the costs and expenses of the proceedings shall be paid.

SECTION 5. In all cases, other than that specified in the last section, the court shall either grant an order on the accused party, to show cause at some reasonable time, to be therein specified, why he should not be punished for the alleged misconduct, or shall issue an attachment to arrest such party, and to bring him before such court, to answer for such misconduct.

SECTION 6. When a rule shall have been entered in any court, according to the practice thereof, requiring any officer or other person, to whom any process of such court may have been directed and delivered, to return the same, an attachment for disobedience of such rule may issue according to the practice of the court, to arrest such officer or person, to answer for such disobedience, without special application to the court.

SECTION 7. If the party charged with misconduct be in the custody of any officer, by virtue of an execution against his body, or by virtue of any process for any other contempt or misconduct, the court may award a writ of habeas corpus, to bring up the body of such person, to answer for such misconduct.

SECTION 8. In cases where a party is entitled to an attachment against any person, without the special order of the court, and such person shall be in custody, as specified in the last section, a writ of habeas corpus, to bring up such person, may be allowed by any judge of the court, or by any officer authorized to perform the duties of such judge in vacation.

SECTION 9. Such writ shall authorize the sheriff in whose custody such person shall be, to remove and bring him before the court to which the same shall be returnable, and to detain him at the place where such court shall be sitting, until some order be made by the court for his disposition.

SECTION 10. When an attachment shall be issued according to the provisions of this chapter, by the special order of any court, such court shall direct the penalty in which the defendant shall give bond for his appearance to answer.

SECTION 11. In all other cases, when a party shall be entitled to an attachment, without the special order of the court, he shall make application to a judge of the court, or to some officer authorized to perform the duties of such judge, who, upon due proof of the facts and circumstances, shall direct the penalty in which the defendant shall give bond for his appearance to answer the matters alleged against him, and shall indorse such order on the attachment.

SECTION 12. Upon arresting any defendant, upon an attachment, to answer for any alleged misconduct, the sheriff shall keep such person in his actual custody, and shall bring him personally before the court issuing the attachment, and shall keep and detain him in his custody, until such court shall have made some order in the premises, unless such defendant shall entitle himself to be discharged, as prescribed in the next section.

SECTION 13. In cases where a sum shall have been endorsed on any attachment issued by the special order of the court, and where any sum shall have been so endorsed by any judge or other officer, as hereinbefore prescribed, the defendant shall be discharged from arrest on such attachment upon executing and delivering to the officer making the same, in his name of office, and to his assigns, at any time before the return day of such writ, a bond with two (2) sufficient sureties, in the penalty endorsed on such attachment, with a condition that the defendant will appear on the return of such attachment, and abide the order and judgment of the court thereupon.

SECTION 14. When an attachment shall be issued by the special order of the court, a certificate to that effect shall be endorsed thereon by the clerk of such court, and if no sum be specified in which the defendant shall be held to bail on such writ, he shall not be entitled to be discharged from the arrest thereon, upon executing any bond or in any other manner unless upon the special order of the court issuing the attachment.

SECTION 15. When an attachment shall be issued without the special order of the court, and an order specifying the sum in which the defendant is to be held to bail is not endorsed thereon, the defendant shall be discharged from the arrest thereon, on executing a bond in the penalty of one hundred (100) dollars, with sureties, in the same manner, and with the like condition, as hereinbefore specified.

SECTION 16. Upon returning any attachment, the officer executing the same shall return the bond, if any, taken by him of the defendant, which shall be filed with such attachment.

SECTION 17. The sheriff or other officer to whom any attachment shall be delivered, shall return the same by the return day specified therein, without any previous rule or order for that purpose, and in case of default, an attachment may be issued against him, upon being allowed by a judge of the court, or by an officer authorized to perform the duties of such judge, upon proof of such default; and in such allowance, the cause of issuing the same shall be stated, and that the defendant is not to be discharged upon bail, or in any other manner but by order of the court.

SECTION 18. The officer to whom such last mentioned attachment shall be delivered, shall execute the same by arresting and keeping the defendant in his custody, bringing him personally before the court, and detaining him in such custody, until the order of the court.

SECTION 19. When any defendant arrested upon an attachment, shall have been brought into court, or shall have appeared therein in response to any order to show cause, he shall be permitted to file affidavits controverting or explaining the matters stated in the affidavits upon which such attachment was issued, or order to show cause made, within such reasonable time as the court shall allow, and the court may receive any affidavits, or oral proofs contradictory or confirmatory of the answers of the defendant, and upon all such affidavits and proof, the court shall determine whether the defendant has been guilty of the misconduct alleged.

SECTION 20. Punishment for contempts may be by fine or imprisonment in the jail of the county where the court may be sitting, or both, in the discretion of the court; but the fine shall in no case exceed the sum of two hundred and fifty (250) dollars, nor the imprisonment thirty (30) days; except in those cases where the commitment shall have been for the refusal to perform an act or duty which is still within the power of the party to perform.

SECTION 21. If an actual loss or injury has been suffered by any party, by the misconduct alleged, the court, in addition to such other penalty as may be imposed, shall order a sufficient sum to be paid by the defendant to such party to indemnify him, and to satisfy his costs and expenses; and in such case the payment and acceptance of such sum shall be an absolute bar to any action by such aggrieved party, to recover damages for such injury or loss.

SECTION 22. When the misconduct complained of consists in the omission to perform some act or duty, which is yet in the power of the defendant to perform, he shall be imprisoned only until he shall have performed such act

or duty, and paid such fine as shall be imposed, and th costs and expenses of the proceedings.

SECTION 23. In such case the order and process of com mittment [commitment] shall specify the act or duty to b performed, and the amount of the fine and expenses to b paid.

SECTION 24. Persons proceeded against according to th provisions of this chapter, shall also be liable to indictmen for the same misconduct, if it be an indictable offense; bu the court before which a conviction shall be had on suc indictment shall take into consideration the punishmen before inflicted, in imposing sentence.

SECTION 25. If the defendant against whom an attach ment shall have been issued and returned served, do [does not appear on the return day thereof, the court may eithe award another attachment, or may order the bond take on the arrest to be prosecuted, or both.

SECTION 26. The court may order an assignment of th bond to any aggrieved party who shall be authorized b the court to prosecute the same, and such party may mai tain an action thereon in his own name, as assignee of th sheriff or officer to whom the same was given, in the sam manner as in other actions on bonds with condition to pe form covenants other than the payment of money.

SECTION 27. The measure of the damages to be assesse in such action, shall be the extent of the loss or injury su tained by such aggrieved party, by reason of the misco duct for which the attachment was issued, and his costs an expenses in prosecuting such attachment.

SECTION 28. If the court shall not order an assignme of such bond as provided in section twenty-six (26), th court, in case the defendant shall fail to appear accor ing to the condition of the bond taken on the arrest, sha

order the same to be prosecuted by the attorney general, or by the prosecuting attorney for the county in which the bond was taken, in the name of the officer who took such bond.

SECTION 29. In such case the whole penalty of the bond shall be forfeited and recovered, and from the moneys collected thereon the court shall order such sum to be paid to the party prosecuting the attachment, as the court ordering the prosecution shall think proper, to satisfy the costs and expenses incurred by him, and to compensate him for any injury he may have sustained by the misconduct for which such attachment was issued; and the residue of such moneys shall be paid into the treasury of the county in which the bond was taken, to the credit of the general fund.

SECTION 30. If on the return of an execution, duly issued upon any judgment obtained on such bond, it shall appear that the sureties taken therein were, at the time of taking them, insufficient, and that the officer receiving them had reasonable ground to doubt their sufficiency, he shall be liable in an action on the case to the party aggrieved, who may have prosecuted such suit, for the amount of the judgment recovered by him, and for his costs and expenses in such suit; or if such suit was brought by the attorney general or a prosecuting attorney, an action on the case may in like manner be brought by them, in the name of the people of this state, for the amount of the judgment so recovered; and the same disposition of the moneys collected in such action on the case against such officer shall be made as directed in the last preceding section.

SECTION 31. Whenever by the provisions of this ch
ter an officer is required to keep any person arrested up
an attachment in actual custody, and to bring him p
sonally before any court, the inability, from sickness
otherwise, of such person to attend such court persona
shall be a sufficient excuse for not bringing him before s
court; nor shall any officer be required, in any case, to c
fine any person arrested upon an attachment to ans
for misconduct in any prison, or otherwise to restrain
of his personal liberty, except so far as shall be necess
to secure his personal attendance.

MAY 18 1955
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. [redacted] 52

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO,
a voluntary unincorporated labor union;
LOCAL UNION No. 656 of said International Union;
A. JAMES DODDIE and RUSSELL NOLAN,
Appellants,

vs.

GREAT LAKES GREYHOUND LINES,
a Division of The Greyhound Corporation,
a Delaware Corporation,
Appellee

ON APPEAL FROM THE SUPREME COURT OF MICHIGAN

MOTION TO DISMISS AND/OR AFFIRM

EDMUND M. BRADY,
Attorney for Appellee,
2150 Guardian Building,
Detroit 26, Michigan.

MATHESON, DIXON & BRADY,
Of Counsel for Appellee,
2150 Guardian Building,
Detroit 26, Michigan.

Interstate Brief & Record Co., 642 Beaubien St., Detroit 26, Michigan

SUBJECT INDEX

	Page
I. Opinions Below	2-4
II. Statement	4-14
A. Appellants' Contentions	4-5
B. No Substantial Question Involved	6-14
Facts of the case	6-14
III. Argument	14-20
The Constitutional procedural requirements of due process of law were met in this case and the resulting findings of the Trial Court as sustained with one exception by the Supreme Court of the State of Michigan are controlling upon this Court	14-25
IV. The Decision Below Rests Upon a Non-Federal Question	20-25
Conclusion	26
Certificate of Service	26

INDEX TO AUTHORITIES CITED

Compiled Laws of Michigan, 1948:	
Sec. 605.1; M. S. A. Sec. 27.511, Sections 1 (3)	21
Sec. 605.3; M. S. A. 27.513	21
Sec. 605.19, M. S. A. Sec. 27.529	21
Cooke v. United States 267 U. S. 517; 45 S. Ct. 390	4, 5, 16
In re Oliver 333 U. S. 257; 65 S. Ct. 499	4
Sacher v. United States 343 U. S. 1; 72 S. Ct. 451	4

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No.....

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO,
a voluntary unincorporated labor union;
LOCAL UNION No. 656 of said International Union;
A. JAMES DODDIE and RUSSELL NOLAN,
Appellants,
vs.
GREAT LAKES GREYHOUND LINES,
a Division of The Greyhound Corporation,
a Delaware Corporation,
Appellee

ON APPEAL FROM THE SUPREME COURT OF MICHIGAN

MOTION TO DISMISS AND/OR AFFIRM

Comes now appellee, Great Lakes Greyhound Lines, a division of The Greyhound Corporation, a Delaware Corporation, pursuant to the provisions of Rule 16 of the Revised Rules of this Court and files its statement in opposition to appellant's Jurisdictional Statement and hereby

moves the Court to dismiss the appeal herein or affirm the decision and decree of the Supreme Court of the State of Michigan from which decision and decree said appeal is taken, on the grounds that the appeal presents no substantial questions requiring further argument before or warranting further review by this Court.

I. OPINIONS BELOW

Appellant's attached copies of the opinion and order of the Supreme Court of Michigan to their Jurisdictional Statement as Appendices A and B thereof. Appellants also state at page 2 of their Jurisdictional Statement under the captioned "Opinion Below" that "The Circuit Court did not prepare an opinion".

It is true that the Circuit Court (trial court) did not prepare and file an opinion separate from the record made at the trial of the case, but it is not correct to say that such Court did not render an opinion in the case because it did render such an opinion from the Bench during the course of the trial and hearings involved in these proceedings. The trial court's opinion, findings and conclusions are contained in the record of this case and were stated as follows:

> Record page 83: "The injunction of this Court should have been obeyed. Whether or not the Court had jurisdiction is not important. The Court assumed jurisdiction in this matter and restrained picketing. Whether the Court was right or wrong in that order is not material. The order stands and picketing became unlawful. The defendants concerned in this case decided for themselves whether or not they would continue picketing. They decided for themselves

whether this Court had jurisdiction. I don't see how a Court can permit its orders to be disobeyed as this order was. It weakens the entire form of government we have in this country if anyone is permitted to violate the order of the Court."

Record page 97: "The Court: I will find Local Union 656 of International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, guilty of contempt of this Court for violation of the restraining order. I also find A. James Doddie, International Representative of the International Union, guilty of contempt of Court."

Record page 98: "The Court: I will find Russell Nolan guilty of contempt of this Court; also the Local Union 656 and the International Union. I find John Szabo guilty of contempt of Court. He has been served and he has been mentioned as one of the pickets. As far as Mr. Szabo is concerned, he is a worker, an employee, and he takes orders from his Union. Had he been told to withdraw from the picket line, I have every reason to assume that he would; but I assume he was not told to withdraw. In his case, I am going to suspend sentence.

"As far as the International Union is concerned and the Local CIO is concerned, I am going to fine them $250 (The Court originally made the fine $500 but subsequently changed it to $250 upon determining that $250 was the maximum fine permitted by statute in such a case) each for contempt of this Court's injunction.

"As far as the individuals, the officers are concerned, they are each sentenced to ten days in the County Jail and also fined $100 each."

II. STATEMENT

A. Appellants' Contentions.

The only ground upon which Appellants rest their appeal is that they have been denied due process of law in violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States. This contention is denied by Appellee.

Decisions of this Court submitted by Appellants in support of their aforesaid contention are cited as follows:

1. *Cooke v. United States* 267 U. S. 517; 45 S. Ct. 390;
2. *In re Oliver* 333 U. S. 257; 65 S. Ct. 499;
3. *Sacher v. United States,* 343 U. S. 1; 72 S. Ct. 451.

We believe it to be fair to say that this Court has consistently held that:

"Due process of law, therefore, in the prosecution of contempt, except of that committed in open Court, requires that the accused should be advised of the

charges and have a reasonable opportunity to meet them by way of defense or explanation. We think this includes the assistance of counsel, if requested, and the right to call witnesses to give testimony, relevant either to the issue of complete exculpation or in the extenuation of the offense and in mitigation of the penalty to be imposed." (See decision of this Court in *Cooke case, supra,* 267 U. S. 517; 537.)

Therefore, if any confusion may exist in any of the 48 States of the United States with regard to what constitutes due process of law under the due process clause of the Fourteenth Amendment to the Constitution of the United States in connection with contempt not committed in the presence of the Court, as Appellants allege at page 12 of their Jurisdictional Statement that such confusion does exist, it cannot exist because of any inconsistency in the decisions of this Court applicable to such subject matter. The decision of this Court in the Cooke Case, *supra,* was rendered in 1925 while its decision in the Sacher case, *supra,* was rendered in 1952. In the interim the case of In re Oliver, *supra,* was decided by this Court during 1947.

No such alleged confusion exists in the State of Michigan because the decision of the Supreme Court of that State rendered in this case (341 Mich. 290; 309) specifically considered the decision of this Court in the Cooke case, as summarized in the decision of this Court in the case of In re Oliver, and disposed of Appellant's constitutional arguments and contentions there advanced (see Record Pages 121-123 inclusive) based upon the varied tests of due process as in said decisions of this Court defined.

It should here be pointed out that Appellants first raised the constitutional questions here advanced (although in somewhat different form) before the Supreme Court of the State of Michigan.

B. No Substantial Question Involved.

This appeal presents no substantial question warranting further argument before or further review by this Court.

It is submitted that the unanimous opinion of the Supreme Court of Michigan which is a part of the record herein, is a well considered opinion and completely and fairly sets forth the facts and law of the case. It is the position of the Appellee, however, that Appellants in the preparation and filing of their Jurisdictional Statement herein oversimplified certain of the facts of the case and omitted certain important facts which should be advanced in order that there might be a proper understanding of the complete factual situation which caused the institution of the proceedings in question at the outset and the ultimate disposition thereof. Accordingly we shall set forth with proper record reference a concise statement of all facts as they pertain to the basic issues herein advanced by Appellants.

Facts of the case.

Appellee is a common carrier of passengers and related traffic by motor vehicle moving in interstate, foreign and intrastate commerce and as such maintains operations into, through and out of the cities of Detroit, Birmingham, Mt. Clemens and Wyandotte, Michigan (R. 2 and 3).

Appellee's driver employees are members of and are represented exclusively by the International Union, Amalgamated Association of Streets, Electrical Railway and Motor Coach Employees of America, *A.F.L.*, and certain related and affiliated local unions thereof (R. 9).

Appellee's maintenance employees are members of the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, *C.I.O.;* maintenance employees employed at its main garage in Detroit belong to Local 656 of said Union; its maintenance employees employed at its Wyandotte garage are members of Local 563 of said Union, and its maintenance employees employed at its Birmingham and Mt. Clemens garages are members of Local 417 of said Union (R. 3, 4 and 13).

Under an agreement dated December 4, 1950, entered into between Appellee and Appellant International Union; Appellant Local Union 656 as well as Locals 563 and 417, said Appellant International Union (and its aforesaid Locals) became "the exclusive bargaining agency for its (Appellee's) maintenance employees (except supervisory employees * * *)" employed at each of Appellee's aforesaid maintenance garages (R. 13). Under the terms of said agreement, Appellee's employees were "required as a condition of continued employment to be members of the Union" on and after the effective date of the agreement (R. 14); "Accredited representatives of the Local Union shall be employees of the Company covered by this agreement." (R. 15); and Article IV, Section 2 thereof provided as follows:

> "The Company nor the Union will in no way interfere with or interrupt production because of any grievance until an earnest effort has first been made by both parties to settle the dispute through the grievance procedure provided for in this Agreement" (R. 16).

Grievance procedure under the agreement is set forth in Article IV, Section 3 thereof (R. 16).

The aforesaid agreement was executed, among others, by the following:

A. Great Lakes Greyhound Lines, by R. W. Budd, President;

B. International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, C.I.O., Local 656, 563 and 417,

Leo. H. Russell (Local 656),

A. James Doddie,

International Representative, Region 1-A, (R. 40-41).

On Thursday, April 23, 1953, at which time the aforesaid agreement was effective and at which time there were no labor disputes existing between Appellee and Appellant International Union, Appellant Local Union 656 or Local Unions 563 and 417 and there being only one grievance existing between Appellee and Appellant Local Union 656 concerning ventilation at the Appellee's garage located in Detroit, which grievance was being handled in all respects as required by the provisions of said agreement, Appellant International Union and Appellant Local Unions 656, 563 and 417 placed into effect at 4:30 a. m. on said day and date an illegal strike, resulting in Appellee's maintenance employees ceasing all work at all Appellee's garages located in the aforesaid cities and caused picket lines to be established at each of said locations (R. 7).

Appellee transports tens of thousands of passengers daily with buses stored and maintained at the aforesaid locations and that although Appellee's driver employees, represented, as aforesaid, by another union

(A.F.L.) and who were not on strike, were ready and willing to operate such buses they would not cross the picket lines so established, as aforesaid, in so doing. As a result, Appellee's service to the public was discontinued (R. 8).

During the afternoon of Thursday, April 23, 1953, Appellee caused its sworn bill of complaint to be filed in the Circuit Court for the County of Wayne, State of Michigan (R. 2), whereunder, among other things, for the reasons above stated, it prayed that said Court issue its order restraining and enjoining the defendants named therein (which included Appellant International Union; Appellant Local Union 656 and Appellants A. James Doddie and Russell Nolan) from establishing and maintaining picket lines at Appellee's aforesaid garages located at Detroit, Wyandotte, Birmingham and Mt. Clemens, Michigan, at the locations therein specifically described (R. 10-11).

The Wayne County Circuit Court issued its temporary restraining order, as prayed, and the same was duly served upon Appellants (R. 44 and R. 47-49).

Upon the aforesaid service of said restraining order, all picketing stopped at Appellee's garages located at Wyandotte, Birmingham and Mt. Clemens, Michigan. The picketing continued at Appellee's Detroit, Michigan garage as well as its parking lot located in Detroit, Michigan (R. 43).

At or about noon Friday, April 24, 1953 (R. 85), picketing at Appellee's Detroit garage and parking lot still continuing, Appellee filed with the Wayne County Circuit Court its sworn petition supported by affidavit, whereunder it sought to have contempt proceedings instituted against Appellant International

Union; Appellant Local Union 656, Appellant A. James Doddie and Appellant Russell Nolan and others. Thereupon the Trial Court issued its order dated April 24, 1953 requiring Appellants, among others, to show cause why they should not be punished for contempt of Court for the violation of the aforesaid temporary restraining order. The order, by its terms, required that it be served upon respondents by 3:00 p. m. April 24, 1953 and said respondents were required thereunder to appear and show cause at 4:00 p. m. April 24, 1953 as to why they should not be punished for contempt of Court for violating the terms of said restraining order (R. 50-57).

Service of said contempt show-cause order was made upon Appellant International Union and upon Appellant A. James Doddie at 1:50 p. m. on April 24, 1953 (R. 59-60). Service of said order to show cause was made upon Appellant Nolan and Appellant Local Union 656 at 2:20 p. m. on April 24, 1953 (R. 57 and 98).

Hearing on the order to show cause was held at 4:00 p. m. Friday, April 24, 1953 before the Trial Court. At such time the Appellants so served appeared by counsel (R. 71). At the hearing the Court asked:

> "Do the defendants want to show cause why they should not be punished for contempt?" (R. 73).

No attempt to show cause why any of the Appellants should not be punished for contempt was made by either the Appellants themselves or their attorney. Thereafer the Court suggested that pickets be withdrawn and negotiations entered into for the purpose of attempting to settle the strike. This procedure was

stated by Appellee's counsel to be acceptable (R. 75). A recess was declared in order to permit counsel for the Appellants to confer with his clients. Upon the conclusion of the recess, counsel for the Appellants stated as follows:

> "Mr. Rothe: After a brief discussion I am informed they are perfectly willing to sit down and start negotiating immediately. They are fearful, however, as to one suggestion your Honor made and this one they cannot agree with because they say that is the crux of the case. They say they are perfectly willing to begin negotiating if the matter be ordered to remain *in status quo;* where it is now. It is possible if the pickets are taken out the Company will stall and not negotiate in good faith. They will be where they started. That is the only pressure there is here on the Company to bring about a settlement. *But if your Honor will enter such an order we will begin negotiating in good faith and withdraw the pickets immediately"* (R. 75-76—emphasis supplied).

At no time did Appellants either through their attorney or individually contend that the temporary restraining order was illegal. After further discussion, it was suggested by counsel for Appellants that the matter be adjourned until the following day (Saturday, April 25, 1953) so as to permit the parties to confer. Counsel for Appellee concurred in such request, which was thereupon granted by the Court (R. 79). On Saturday, April 25, one of Appellee's counsel advised the lower court that the strike had been settled. Thereupon, the Court adjourned the hearing on the aforesaid show-cause orders to May 1, 1953 (R. 80-81). Neither the counsel for the Appellants nor the Appellee participated in the conferences leading to the settlement of the strike.

At the May 1, 1953 hearing before the Court, and in accordance with the settlement reached by Appellants and Appellee at the April 24, 1953 conferences (at which conferences counsel for none of the parties was present) counsel for Appellee asked that Appellee be granted permission to withdraw the petition which had been filed with the Court, requesting that defendants named therein be cited and punished for contempt of Court (R. 81). The Court denied the request and thereupon stated its opinion as hereinbefore in this Motion set forth (R. 83-84). Thereupon the Count instructed counsel for Appellee to proceed with proof of the contempt (R. 86). (The affidavit of R. W. Budd, President of Great Lakes Greyhound Lines, a division of The Greyhound Corporation, appended to the petition to punish for contempt, stated that the picket lines which had been established at Appellee's Detroit garage and parking lot prior to the filing of its bill of complaint with the Lower Court on April 23, 1953, and which had been enjoined by an order of said Court issued on said date, had continued notwithstanding such restraining order and was continuing on April 24, 1953. Further the affidavit of Mr. R. W. Budd stated upon information of belief that Appellant International Union and Appellant Local Union 656 "intend to continue to disregard the said restraining order") (See record pages 54-55).

Appellee presented two witnesses who were sworn and testified before the Trial Court. The first witness, Witness Shakespeare, a commercial photographer, introduced four photographs (Exhibits 1-4) which he personally took at the Detroit garage of Appellee, located between Fifteenth and Seventeenth Streets, and between Lafayette Boulevard and Fort Street, in

the City of Detroit, Michigan, showing picketing at said location between the hours of 10:00 a. m. and 12 oclock noon, on Friday, April 24, 1953 (R. 87-91). This witness was cross-examined by counsel for Appellants (R. 91).

The second witness presented was Mr. Donald Coutts, garage superintendent at Appellee's Detroit garage (R. 92). Witness Coutts testified that he is garage superintendent of Appellee at its Detroit garage located as aforesaid; that he was at the garage at 5:15 a. m. Thursday, April 23, 1953, and observed pickets at the garage at that time; that he was also at the garage on Friday, April 24, 1953, and on Saturday, April 25, 1953, and that he observed picketing at the garage throughout all the day Friday, April 24, 1953 and on Saturday, April 25, 1953, until 9:15 a. m., when the picket line was withdrawn. In addition, Witness Coutts identified by name the employees of Appellee shown in Exhibits 1 through 4, inclusive, and stated that he was present when the photographs were taken by Witness Shakespeare and that certain of the individuals shown in those photographs including the person carrying the sign stating "Greyhound Local 656, C.I.O., Are on Strike" were members of Appellant Union (R. 94-95).

Counsel for the Appellants cross-examined Witness Coutts (R. 95-96).

After the completion of the foregoing testimony, the Lower Court asked counsel for Appellants:

> "The Court: *Well, does the defendant wish to put in any evidence?*
>
> Mr. Rothe: *No, your Honor.* I move to dismiss because these defendants have not been identified as having had knowledge of the injunction. * * *" (R. 96.)

Thereafter the Court denied the respondent's motion to dismiss and stated:

> "The Court: The motion is denied. *Do the defendants wish to show cause why they should not be punished for contempt?*
>
> Mr. Rothe: *No, your Honor. They don't wish to take the stand, if that is what your Honor is asking me. At this point, it is my opinion, no proof has been entered against them which requires any answer on their part.*" (R. 97.) (Emphasis supplied.)

Thereupon, the Court found Appellants guilty of contempt of Court and imposed fines and sentences hereinbefore described.

III. ARGUMENT

THE CONSTITUTIONAL PROCEDURAL REQUIREMENTS OF DUE PROCESS OF LAW WERE MET IN THIS CASE AND THE RESULTING FINDINGS OF THE TRIAL COURT AS SUSTAINED WITH ONE EXCEPTION BY THE SUPREME COURT OF THE STATE OF MICHIGAN ARE CONTROLLING UPON THIS COURT.

As hereinbefore stated and as stated in Appellants' Jurisdictional Statement, Appellants rest their entire case before this Court upon the decision of this Court in the Cooke, Oliver and Sacher cases, *supra*, contending at page 9 of their Jurisdictional Statement that "The decision below by the Michigan Supreme Court is in direct conflict with the principles enunciated in In re Oliver * * *."

Rather than being "in direct conflict with the principles enunciated" in the decision of this Court in the case of In re Oliver, we submit that the decision of the Supreme Court of Michigan is in direct accord with the principles enunciated therein applicable to the procedural require-

ments of due process of law under the due process clause of the Fourteenth Amendment to the Constitution of the United States.

In the Oliver case this Court held that the Appellant was not advised of the charges made against him. In the instant case the Appellants were fully advised as to the charges made against them. They were so advised through the medium of the petitions and orders to show cause served upon them as well as advised by the Court in open Court at the time of the hearings held on such petitions pursuant to such orders to show cause.

In the Oliver case this Court found that Appellant was called and required to testify in secret before the Grand Jury. In the instant case all hearings were held before the Court in open Court.

In the Oliver case this Court found that the Appellant was denied an opportunity to see and confer with his lawyer. In the instant case the Appellants not only had their lawyer but their lawyer appeared in Court on their behalf, advanced argument to the Court on their behalf and cross-examined witnesses who testified under oath before the Court. Accordingly Appellants in the instant case were fully afforded the opportunity to cross-examine witnesses which opportunity was not afforded Appellant in the Oliver case as this Court also found.

In the Oliver case this Court held that Appellant was not given a reasonable opportunity to defend himself. In the instant case the Appellants were given every opportunity to defend themselves. The Trial Court stated at record page 73 as follows:

> "The Court: There is a restraining order in this case restraining picketing at the terminal. Do the defendants want to show cause why they should not be punished for contempt?"

Again at page 96 the Court stated as follows:

> "The Court: Well, does the defendant wish to put in any evidence?
> Mr. Rothe: No, your Honor. * * *"

Again at record page 97 the Court asked:

> "The Court: * * * Do the defendants wish to show cause why they should not be punished for contempt?
> Mr. Rothe: No, your Honor. They don't wish to take the stand, if that is what your Honor is asking me. * * *"

It must be conceded that the Trial Court in every sense of the word afforded Appellants every possible opportunity to defend themselves, to testify themselves, to have others testify in their behalf or to present any evidence which they might desire to present for the consideration of the Court "relevant either to the issue of complete exculpation or in extenuation of the offense and in mitigation of the penalty to be imposed." (See *Cooke v. U. S.* 45 S. Ct. 390; 395).

In the Oliver case this Court held that the entire record of the testimony in that case was not before the Lower Court and was not therefore before this Court. In the instant case the entire record is before this Court and it was before the Supreme Court of Michigan because the Trial Court directed that the entire record be submitted to the Appellate Court and not an abstract of that record (R. 80-101).

In addition to the foregoing it should be pointed out that neither before nor after the taking of proofs did Appellants request an adjournment of the proceedings, nor indicate to the Court that further opportunity was needed to prepare a defense to the petition. At no stage

of the proceedings did Appellants dispute their guilt nor deny the acts charged against them. In fact, at the hearing on the afternoon of April 24, 1953, after service of the petition to punish for contempt and the order to show cause on Appellants, counsel for the Appellants, acting in their behalf, informed the Trial Court that they did not wish to withdraw the pickets because it was the only pressure they had on the Appellee, stating, *"but if your Honor will enter such an order we will begin negotiating in good faith and withdraw the pickets immediately." This in itself is an admission of record that the terms of the temporary restraining order were being disobeyed.* No answer was filed to the sworn bill of complaint, no answer was filed to the sworn petition to punish for contempt as well as the affidavit appended thereto, no counter-affidavits were filed or attemped to be filed and no Appellant or anyone acting in their behalf took or attempted to take the witness stand and testify at the time of the hearing on the petition to punish for contempt.

Clearly Appellants were not denied "their day in Court." They were advised of the charges against them, they were given more than a reasonable opportunity to meet them by way of defense or explanation, they were given an opportunity to testify or call witnesses in their own behalf, and they were given an opportunity to and did cross-examine the witnesses against them. There was no element of unreasonable haste or secrecy present in the proceedings, nor were Appellants subjected to any pressure by the Trial Court. APPELLANTS REFUSED TO AVAIL THEMSELVES OF THE RIGHTS GUARANTEED TO THEM BY THIS COURT'S DECISION IN THE OLIVER CASE AND HAVING MADE SUCH ELECTION AS STATED TO THE COURT BY THEIR ATTORNEY, THEY ARE BOUND BY IT. THE PROCEDURAL REQUIREMENTS OF DUE PROCESS AS

SPECIFIED BY THE DECISION OF THIS COURT IN THE COOKE CASE AND IN THE OLIVER CASE DO NOT REQUIRE A COURT TO COMPEL A PARTY TO AVAIL HIMSELF OF HIS VESTED RIGHTS. IN THE INSTANT CASE THE TRIAL COURT AFFORDED THE APPELLANTS THE DEFINED PROCEDURAL RIGHTS OF DUE PROCESS. THEY DECLINED TO EXERCISE THOSE RIGHTS.

Notwithstanding the facts of record in this case and notwithstanding the adherence of the Trial Court and the Supreme Court of Michigan to the procedural requirements of due process as defined by this Court Appellants in their Jurisdictional Statement filed with this Court state at page 12 thereof that review is "believed necessary to correct the present shocking miscarriage of justice, * * *." *The "shocking" point in this case is that Appellants having elected to do that which they did, now attempt to blame the Lower Courts for their so doing notwithstanding the full opportunity to defend themselves if defense was ever intended.*

It is elementary indeed to state that this Court will not exercise its jurisdiction to review a decision of a State Court upon a question of fact. Such is the case here. We respectfully submit that as hereinbefore shown and as disclosed by the opinion of the Supreme Court of Michigan and of the Trial Court, as hereinbefore quoted, the procedural requirements of due process having been met, the findings of fact are binding upon this Court.

Appellants in their Jurisdictional Statement filed with this Court seek to create a Federal Constitutional question by stating at page 11 thereof as follows:

> "Here, the very questions for review involve the Constitutional admissibility as 'evidence' of that which the Michigan Supreme Court must necessarily have used to sustain Appellants' conviction—*ex parte* evidence affidavits."

It will be noted from the foregoing statement that Appellants contend that they were found guilty of contempt of Court merely upon the basis of "affidavits." Such a contention is of course wholly without foundation because the record in this case proves absolutely to the contrary.

The pertinent provisions of the record have heretofore been cited. To reach the result claimed by Appellants, one must reason that the persons who appeared before the Trial Court by counsel in response to an order to show cause why they should not be punished for contempt of Court (R. 71); were asked by the Court if they wanted to show cause why they shouldn't be punished for contempt (R. 73); conferred with counsel regarding the same (R. 75); had authority to withdraw the offending pickets (R. 75-76) and negotiate contracts on behalf of the Local doing the picketing (R. 76) were strangers to the principal suit and all the proceedings before the Trial Court.

That the Trial Court reached a logical conclusion on the basis of all the facts and testimony before it rather than a conclusion desired by Appellants, does not raise a Constitutional issue. While it may be recognized that the appellants were not required and could not be compelled to take the stand and testify, or present controverting evidence, *they cannot manufacture a Constitutional issue by failing to exercise the rights granted to them under the Constitution of the United States.*

Stripped of its verbiage, then, Appellants' argument is reduced to one of quantum of proof. When proceedings are had strictly in accordance with the statutes, defendants

appear by counsel in an unrestricted manner and are offered a reasonable opportunity to controvert the charges and elect not to do so, no Constitutional issue is presented and the question becomes one of fact only. In this connection, it should be pointed out that the proceeding before the Supreme Court of Michigan was an appeal in the nature of certiorari and that therefore that Court was foreclosed from reviewing the evidence. In this regard the Michigan Supreme Court stated at pages 303-304 of its decision in this case (which decision is contained in the record herein) as follows:

> "In coming to our conclusions on the issues involved we have in mind that this is an appeal in the nature of certiorari. In reviewing a conviction for contempt in *In re Gilliland*, 284 Mich. 604, 612, we said:
>
> > 'On certiorari we do not pass on the weight of the evidence or the credibility of witnesses. There being some evidence to support the finding of the trial judge, we cannot disturb it on certiorari.'"

IV.

THE DECISION BELOW RESTS UPON A NON-FEDERAL QUESTION

Appellee having shown that the Trial Court did not find Appellants guilty of contempt of Court merely upon the use of affidavits as Appellants charge, it desires now to show that even disregarding such affidavits the record itself is sufficient to support the findings of the Trial Court as affirmed by the Supreme Court of Michigan.

Under Michigan Law applicable to contempt proceedings it is provided in part (the entire statute is set forth as Appendix C to Appellants' Jurisdictional Statement) as follows:

"605.1 PUNISHMENT FOR CONTEMPT: HEARING BEFORE ANOTHER JUDGE: CASES.

Sec. 1. Every court of record shall have power to punish by fine or imprisonment, or both, persons guilty of any neglect or violation of duty or misconduct, in the following cases, and no others: * * *

3. * * *; for disobedience of any process of such court, or any lawful order thereof, or of any lawful order of a judge of such court, * * *." (C. L. 1948, Sec. 605.1; M. S. A. Sec. 27.511, Sections 1 (3)).

"605.3 SAME: MISCONDUCT NOT IN PRESENCE OF COURT.

When such misconduct is not so committed, the court shall be satisfied by due proof, by affidavit of the facts charged, and shall cause a copy of such affidavit to be served on the party accused, a reasonable time to enable him to make his defense, except in cases of disobedience to any rule or order requiring the payment of money, and of disobedience to any subpoena." (C. L. 1948, Sec. 605.3; M. S. A. 27.513.)

"605.19 DEFENDANT; PERMISSION TO MAKE DEFENSE; COURT TO DETERMINE GUILT.

Sec. 19. When any defendant arrested upon an attachment, shall have been brought into court, or shall have appeared therein in response to any order to show cause, he shall be permitted to file affidavits controverting or explaining the matters stated in the affidavits upon which such attachment was issued, or order to show cause made, within such reasonable time as the court shall allow, and the court may receive any affidavits, or oral proofs contradictory or confirmatory of the answers of the defendant, and upon all such affidavits and proof, the court shall determine whether the defendant has been

guilty of the misconduct alleged." (C. L. 1948, Sec. 605.19, M. S. A. Sec. 27.529.)

Accordingly when the contempt petition was prepared and filed with the Trial Court, there was appended thereto an affidavit as required by law. No answer thereto was filed by Appellants.

A copy of the contempt petition (R. 50-53); the affidavit (R. 54-55); and the order to show cause (R. 56-57) were duly served upon the Appellants (R. 57; 59; 60 and 96-98).

For the purpose of the argument here being advanced, it is assumed that the only office which the aforesaid contempt petition, affidavit and order to show cause played in the contempt proceedings, was to advise the Appellants of the charges made against them.

After service of the aforesaid papers upon Appellants, the show-cause hearing therein provided for was held before the Trial Court in open court.

At the hearing on the show-cause order Appellants appeared by counsel. It was not necessary therefore for the Trial Court to issue an attachment.

At the show-cause hearing it must be conceded by all that the Trial Court for the reasons hereinbefore stated, gave each Appellant every possible opportunity to show cause why it, he or they should not be found guilty of contempt of Court because of violation of the provisions of the Court's temporary restraining order prohibiting picketing at Appellee's Detroit garage and parking lot.

At the show-cause hearing before the Trial Court counsel for Appellants by his statements to the Court admitted that the Appellants had authority to end the illegal strike and that they had not done so and would not do so unless

the Trial Court issued its further order maintaining the "status quo; where it is now." The statements of counsel in question made on behalf of Appellants are contained at record pages 75 and 76 and they read as follows:

> "The Court: May I ask this—The public is interested in this situation. It is being deprived of transportation.
>
> Mr. Rothe: No question about that.
>
> The Court: Would both sides be willing to enter into this kind of arrangement, that negotiations will be had between the parties; the pickets will be withdrawn pending that negotiation; that the employers will not in any way try to perform the service these employees are now performing, and that the employers may withdraw their buses from the garage and parking lot without any interference during the negotiations?
>
> Mr. Rothe: I can't honestly answer that question, your Honor, because I haven't talked with any of the officers of the Union.
>
> The Court: You have here one or two that have been served.
>
> Mr. Brady: I should like to say on the record, as far as the company is concerned, the suggestion of your Honor is acceptable.
>
> The Court: We will take a short recess. Discuss it among yourselves.
>
> (Recess.)
>
> Mr. Rothe: After a brief discussion I am informed they are perfectly willing to sit down and start negotiating immediately. They are fearful, however, as to one suggestion your Honor made and this one they cannot agree with because they say that is the crux of the case. They say they are perfectly willing to begin negotiating if the matter be ordered to remain in *status quo;* where it now is. It is possible if the pickets are taken out the Company will stall and not negotiate in good faith. They will be where they started. That is the only pressure

there is here on the Company to bring about a sett
ment. *But if your Honor will enter such an ord*
we will begin negotiating in good faith and withdr
the pickets immediately.''

It will be noted from the above quoted statement of A
pellant's counsel that Appellants admitted that they we
violating the restraining order in question and that t
only way that they would negotiate would be to have t
Court maintain the "status quo" which is another way
saying that they insisted that the Trial Court condone t
violations of its restraining orders pending a settlement
the illegal strike. Therefore, standing on the record
the statements of Appellants' counsel alone, it is prov
that Appellants were guilty of contempt of Court.

However, again it must be borne in mind that the Tr
Court also had before it (excluding affidavits) the swo
testimony of two witnesses given in open court. Their t
timony has been referred to previously. However, in c
sidering the subject matter here being discussed, it is m
important to bear in mind that Witness Shakespeare,
commercial photographer, personally took four pictures
pickets at Appellee's garage during the period when t
Trial Court's temporary restraining order prohibiti
picketing at such point and place was effective. One of t
pictures showed one of the pickets carrying a sign readi
"Greyhound Local 656, C.I.O., Are on Strike" (R. 9
The other witness, Witness Coutts, garage superintend
for Appellee at its Detroit garage, testified that he p
sonally observed picketing at Appellee's Detroit gara
from 5:15 a. m. on April 23, 1953 until 9:15 a. m. April
1953 which picketing was in violation of the restraini
order of the Trial Court (R. 92-93). Witness Coutts id
tified the individuals picketing at Appellee's Detroit g
age as maintenance employees of Appellee and members

Appellant Unions (R. 92-94) as they were required to be under and pursuant to the applicable provisions of the employment agreement in question (R. 13).

By virtue of the foregoing, it is submitted that standing alone the statements of Appellants' counsel above referred to together with the testimony of Witnesses Shakespeare and Coutts, warranted the Trial Court in finding as it did find as a matter of fact that its restraining order was being and had been violated by Appellants and that as a consequence the Appellants were guilty of contempt of Court.

The foregoing being so, the decision of the Lower Court was based solely upon a finding of fact and no substantial Federal question was therefore involved. In other words, the Appellants through their counsel told the Trial Court that they had the power and authority to negotiate with Appellee for the ending of the illegal strike in question and that they had the authority to terminate the illegal picketing which was being done in violation of the terms and provisions of the Trial Court's temporary restraining order theretofore issued. Nothwithstanding such statements having been made to the Trial Court, the Trial Court still afforded the Appellants full and complete opportunity to purge themselves of contempt, to put in evidence, affidavits or whatever else they might desire to do by way of explanation or defense. This the Appellants elected not to do. Having made the foregoing statements and having made the foregoing election, they determined for themselves as to whether or not they would reject the rights offered to them by the Trial Court. Having rejected those rights, they cannot now be heard to complain that they were denied those rights without due process of law.

CONCLUSION

Because of the reasons hereinbefore in this motion
vanced it is respectfully submitted that the within ap
should be dismissed or the decision of the Supreme C
of Michigan affirmed.

Respectfully submitted,

EDMUND M. BRADY,
Attorney for Appellee,
2150 Guardian Building,
Detroit 26, Michigan.

MATHESON, DIXON & BRADY,
2150 Guardian Building,
Detroit 26, Michigan,
Of Counsel.

Dated: May 9, 1955.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 738

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO, a voluntary unincorporated labor union; LOCAL UNION No. 656 of said International Union; A. JAMES DODDIE and RUSSELL NOLAN,
Appellants,
vs.
GREAT LAKES GREYHOUND LINES, a Division of Greyhound Corporation, a Delaware Corporation

ON APPEAL FROM THE MICHIGAN SUPREME COURT

BRIEF OF APPELLANTS IN REPLY TO MOTION TO DISMISS AND/OR AFFIRM

In our Jurisdictional Statement we emphasized the point that, but for the affidavits and sworn bill of complaint of appellee, no conceivable proof of contempt is in the record; indeed, three of the four appellants are not even mentioned and their very names do not appear in the oral testimony of the case. Unless, then, affidavits are taken under the

Michigan statute to be constitutionally admissible evidence in criminal, constructive contempt proceedings, there was no valid proof against these appellants, and, accordingly, nothing for them to contravert—or prove.

The alleged magnanimity of the trial judge to which appellee adverts, in its brief in response and in support of its motion to dismiss and/or affirm, is, then, very much beside the point. That appellants may have been given the opportunity to affirmatively prove their innocence, i.e., to "show cause" why they should not be cited for contempt, hardly satisfies the requirements of due process, as stressed in *Oliver*, where in such a proceeding as this, criminal in nature, the burden is as to guilt, not innocence, it rests on the prosecution, not the defense, and it has in no wise been met by competent evidence.

It is to be stressed in the latter connection, that appellee now makes no brief whatever for the constitutional admissibility in proceedings like these of such affidavits. No answer is made to our arguments respecting denial, where affidavits are allowed, of the opportunities for confrontation and cross-examination, as guaranteed by *Oliver*.

The constitutional issue is skirted by appellee. And appellee would avoid it altogether by vague and unfounded intimations that there was in fact some oral testimony, apart from what we have cited, upon which the lower courts did, or might have, validly acted.

Thus, for example, under the denomination of "Facts of the Case," the appellee, at pages 6 through 14 of its brief, writes as if the matters there stated amount to a summary of oral testimony in the case. On the contrary, pages 6, 7, 8, and 9, particularly, of appellee's brief *are a paraphrase of the appellee's pleadings and affidavits in this case*, and not a summary of any testimony adduced

on the matters therein alleged.[1] Absolutely the only oral testimony in this case was given on May 1, 1953, the trial date (and is reproduced in full at pages 87-96 of the Record). And as previously indicated, the appellants, with the exception of the Local Union, were not mentioned therein.

Likewise, though neither the trial court nor the Michigan Supreme Court, did or could constitutionally have deemed the cited statements of appellants' counsel as a substitute for formal proof, appellee would retrospectively plant both courts' actions on such statements.

In the first place, the statements in question (R. 75-76) were made on April 24, 1953—a week *before* the trial—by an attorney who had just come into the case a few minutes earlier (R. 72); who stated that he was completely unfamiliar with the issues in the case (R. 72); who had not had an opportunity to examine the pleadings of the case, excepting only some of them, hurriedly, in the corridors of the court building, a few minutes before entering the court room (R. 72); who stated that to the extent that he had any knowledge of the facts at all, he understood that the petition to cite for contempt was "false and fraudulent" (R. 72, 74); who had expressly disclaimed any knowledge of whether the respondents had been served with the injunction or had notice of its terms (R. 73) (a vital element of the alleged offense, for lack of proof of which one defendant's conviction—Szabo—was reversed below); who was speaking in the course of a proceeding which had quickly resolved itself, upon invitation from the court,

[1] Thus, appellee's record references at p. 6 to R. 2 and 3, at p. 6 to . 9, at p. 7 to R. 3, 4, and 13, at p. 7 to R. 13, 14, 15, and 16, and p. 8 R. 40-41 and R. 7, and at p. 9 to R. 8, are references to the plaintiff's appellee's) bill of complaint and supporting, attached Exhibit "A", und at pages 1 through 41 of the record.

into a (successful) negotiation session aimed at the conclusion and settlement of the principal dispute (R. 74); and who, as indicated above, made the statement in question not as part of the actual trial of the contempt charges, *but one week before that trial began,* and following which, the week later, the trial judge directed the taking of oral testimony on the contempt charges (R. 86). That the latter direction would have been idle, had a case already been made out or admitted, is obvious. That the trial judge was satisfied that before May 1, 1953, at least, the case had not been made out, or admitted, further follows from the very terms of the contempt order (R. 61-62), where the findings make no reference whatever to counsel's remarks (other than routine reference to all arguments).

The Michigan Supreme Court likewise did not claim any evidentiary basis in such remarks, nor under established Michigan law could it have done so. For, as the Michigan Supreme Court itself just observed in the recent decision of *Tozer v. Kerr,* 342 Mich. 136, at 140 (decided March 9, 1955), quoting Greenleaf on Evidence:

> "The admission of attorneys of record bind their clients, in all matters relating to the progress and trial of the cause *but, to this end, they must be distinct and formal, or such as are termed solemn admissions, made for the express purpose of alleviating the stringency of some rule of practice, or of dispensing with the formal proof of some fact at the trial* * * *." (Emphasis added.)

For obvious reasons, even appellee has never argued that appellants' counsel intended or offered his statements as a substitution for proof, otherwise required. Accordingly, the statements could not have served as proof.[2]

---

[2] The factual implications of the statements show their applicability at most, in any event, only to appellant Local Union and not any of the other appellants.

In short, there being no oral testimony other than as we have previously described it, the ultimate constitutional questions remain as we have previously posed them in our Jurisdictional Statement, and they are squarely presented.

The great public need that these questions be answered is particularly heightened by the decision of this Court within the past few days in *In the Matters of Leroy Murchison and John White, Petitioners,* No. 405, October Term 1954, United States Supreme Court, decided May 16, 1955, reported at 23 Law Week 4218, wherein this court reviewed the administration of the Michigan one-man grand jury law in a case involving, as here, contempt charges. This Court, by Mr. Justice Black, reversed the unanimous Michigan Court and reaffirmed *In Re Oliver,* saying:

> "We held [in *In Re Oliver,* 333 U. S. 257] that before such a conviction [in contempt proceedings can stand] due process requires as a minimum that an accused be given a public trial after reasonable notice of the charges against him, *have a right to examine witnesses against him,* call witnesses on his own behalf, and be represented by counsel." 23 L. W. 4219 (emphasis added).

The present Michigan statute denies these cited rights of examination and confrontation.

We therefore respectfully renew our request that the Court hear the instant appeal, and deny appellee's motion to dismiss and/or affirm.

Respectfully submitted,

HAROLD A. CRANEFIELD,
Attorney for Appellants,
8000 East Jefferson Avenue,
Detroit 14, Michigan.

ROTHE, MARSTON, MAZEY, SACHS & O'CONNELL,
Attorneys of Counsel for Appellants,
3610 Cadillac Tower,
Detroit 26, Michigan.

May 25, 1955.